Supreme Court, U.S.
FILED
MAY 15 1992
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No. 91-1618 (A-693)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

GEORGE V. VOINOVICH,
Governor of the State of Ohio, *et al.*,
Appellants,

v.

BARNEY QUILTER, Speaker Pro Tempore of the
Ohio House of Representatives, *et al.*,
Appellees.

On Appeal from the United States District Court for the Northern District of Ohio

BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL AND TO AFFIRM RULING OF TRIAL COURT

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QUESTIONS PRESENTED

Whether the district court erroneously held that state reapportionment officials must, as a prerequisite to redistricting, conduct a totality of circumstances analysis adopted by this Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986).

Whether the district court erroneously shifted the burden of proof from plaintiffs attacking legislative districts as diluting minority voting strength to defendant reapportionment officials by requiring them to prove a violation of § 2 of the Voting Rights Act, 42 U.S.C. § 1973, prior to the creation of any minority controlled state legislative districts.

Whether the district court's finding of a violation of § 2 of the Voting Rights Act is erroneous.

Whether the district court erroneously enjoined the primary election for members of the Ohio General Assembly and appointed a special master to redraw Ohio's state legislative districts without first affording defendants a reasonable opportunity to adopt substitute districts.

Whether the district court's finding of a violation of the Fifteenth Amendment is erroneous.

Whether the district court's finding of a violation of the Fourteenth Amendment is erroneous.

LISTING OF ADDITIONAL PARTIES

Appellants

STANLEY J. ARONOFF, President of the Ohio Senate, ROBERT A. TAFT, II, Secretary of State of Ohio, and JAMES R. TILLING, Chief Executive Officer of the Ohio Senate.

Appellees

THOMAS E. FERGUSON, Auditor of State of Ohio, GLEN ACHTERMANN, SAM BARONE, SANDRA GUY, ROBERT MCLAUGHLIN, JAMES B. MCCARTHY, GLADYS HENSON, TOM KILBANE, ROBERT H. TRAINER, A. WAYNE BUSSLER, JAMES B. SPEROS, KENNETH THORNE, CHARLES WALKER, WILLIAM SHANKLIN, CLARENCE LUMPKIN, TYRONE RILEY, RICHARD CORDRAY, Representative of the 33rd Ohio House District, PAUL MECHLING, Representative of the 91st Ohio House District, RONALD GERBERRY, Representative of the 71st Ohio House District, MARY ABEL, Representative of the 94th Ohio House District, and WILLIAM MALLORY, Representative of the 23rd Ohio House District.

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BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL AND TO AFFIRM RULING OF TRIAL COURT

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. INTRODUCTION

Appellants submit the following response to *Appellees' Motion to Dismiss Appeal and to Affirm Ruling of Trial Court* (hereinafter "*Appellees' Motion to Dismiss or Affirm*").

II. THE DISTRICT COURT ERRONEOUSLY REQUIRED DEFENDANTS TO PROVE A PAST VIOLATION OF § 2 OF THE VOTING RIGHTS ACT PRIOR TO THEIR CREATION OF MINORITY CONTROLLED DISTRICTS UNDER THE 1991 PLAN OF APPORTIONMENT, THUS SHIFTING THE BURDEN OF PROOF FROM THE PLAINTIFFS TO THE APPORTIONING OFFICIALS

In their Motion to Dismiss or Affirm, Appellees once again mischaracterize the action of the majority of the

Apportionment Board in adopting the 1991 plan of apportionment.[1] Appellees continually refer to Appellants' plan as "creating majority-minority districts wherever possible." The district court adopted this mischaracterization and Appellants must, therefore, emphasize that the strategy used by the Apportionment Board in drafting the plan was not one of maximizing minority voting strength.

Appellees accomplish this mischaracterization by referring to isolated quotes taken out of context wherein Appellant Tilling, Secretary to the Apportioning Persons, is explaining the process of drawing legislative districts to members of the public. *Appellees Motion to Dismiss or Affirm* at 8. In truth, however, the position consistently taken by Appellants throughout the process of drafting the plan has been that § 2 of the Voting Rights Act, 42 U.S.C. § 1973, simply requires state redistricting officials to avoid the dilution of minority voting strength. *Findings and Conclusions*, App. at 270a (Ohio Apportionment Board Feb. 18, 1992). It neither requires the creation of minority controlled districts nor prohibits their creation. If, however, the apportioning officials avoided fragmenting any sufficiently large and geographically compact

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[1] Appellees attempt to rehash their failed arguments from the proceedings below by asserting that the plan is fraught with violations of the Ohio Constitution. *Appellees' Motion to Dismiss or Affirm* at 14-15. Appellants direct this Court's attention to the Ohio Supreme Court's decision in *Voinovich v. Ferguson*, 63 Ohio St.3d 198 (1992), wherein the court held "the plan to be constitutional." 63 Ohio St.3d at 200. That court directed Appellants to make technical corrections to the plan, which corrections were adopted by the Board on February 18, 1992 (the 1991 plan of apportionment, as amended on February 18, 1992, will hereinafter be referred to as the "1991 plan of apportionment"). The district court in the case at bar found no violations of the Ohio Constitution, and indeed abstained from any consideration of the state issues raised by Appellees. *Quilter v. Voinovich*, No. 5:91CV-2219, App. at 15a (N.D.Ohio Jan. 31, 1992). Consequently, Appellees' assertion that Appellants somehow "used" the Voting Rights Act to shield their alleged violations of the Ohio Constitution must be rejected in the absence of any finding of a violation of the Ohio Constitution.

concentration of minority population, they could avoid a successful § 2 challenge.

Indeed, were Appellants to have taken the view that the Voting Rights Act required the *maximization* of minority voting strength, they would, as noted by Judge Dowd in his dissenting opinion of January 31, 1992, have drawn districts with the lowest percentage of black population necessary to elect a black member of the Ohio House of Representatives. *Quilter v. Voinovich*, No. 5:91CV-2219, App. at 35a (N.D.Ohio Jan. 31, 1992) (Dowd, J., dissenting). Under the majority opinion, minorities are *per se* "packed" into a minority controlled legislative district where it would be possible to elect a minority candidate with less than a majority of minority population in that district. Accordingly, it is the district court's decsion, not the process of drafting the 1991 plan of apportionment, which would require the maximization of minority voting strength.

From the outset of the reapportionment process, which began nearly one year prior to the adoption of the plan in October 1991, Tilling worked closely with minority leaders throughout the state to achieve a consensus on the configuration of house and senate districts in Ohio's urban counties. *Findings and Conclusions*, App. at 269a-270a (Ohio Apportionment Board Feb. 18, 1992). Indeed, in an effort to open up the reapportionment process, the Board, in the two months prior to the adoption of a plan, held an unprecedented series of public hearings throughout the state to receive public input on the drafting of the new plan. *Findings and Conclusions*, App. at 163a (Ohio Apportionment Board Feb. 18, 1992). Tilling worked closely with Floyd Johnson of the Ohio NAACP, which also submitted a proposed plan of apportionment limited to the urban counties. Indeed, as conveniently ignored by Appellees and the majority of the district court, Tilling incorporated the NAACP's plan in its entirety into the plan of apportionment originally submitted

to the Board. The only changes in that plan, other than the technical corrections made on February 18, 1992, were in Cuyahoga County and were the result of negotiations with the NAACP and other minority groups.

With this background in mind, it is significant that this case was not commenced and maintained out of concern for the rights of minority voters in Ohio. Indeed, as noted above, the plan adopted was configured in accordance with negotiations with groups representing minority voters. Rather, as revealed in *Appellees' Motion to Dismiss or Affirm*, this case was commenced to preserve the lopsided majority incumbent white Democrats now hold in the Ohio House of Representatives. See *Appellees' Motion to Dismiss or Affirm* at 19-20 ("Tilling knew that black voters in Ohio voted 85-95% Democratic and that wherever blacks were 13% or more of the population, Democrats were inevitably elected.").[2] Floyd Johnson of the Ohio NAACP decried this "use" of black voters to bolster the incumbencies of white Democrats as "plantation politics" which could no longer be tolerated. *Transcript of Apportionment Board Hearing* at 62 (February 11, 1992).

Furthermore, contrary to Appellees' assertion, the primary flaw in the district court's decision is that it shifted the burden of proof because, instead of requiring the plaintiffs to show that the minority controlled districts created by the Board diluted minority voting strength in violation of the Voting Rights Act, it required the Board to "justify" its creation of those districts. Although Appellees attempt to minimize this shifting of the burden of proof, its significance is manifested throughout *Appellees Motion to Dismiss or Affirm*. See, e.g., *Appellees' Motion to Dismiss or Affirm* at 9 ("The court found the evidence *supplied by the Defendants-Appellants* to show

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[2] Appellees presented a claim of political gerrymandering to the district court, which did not find that Appellees had established such a claim.

violations under the 1981 plan to be 'grossly inadequate' ") (emphasis added).

Finally, Appellees argue that Appellants, because they chose not to appeal from the district court's January 31, 1992 Opinion and Order, are barred from challenging the legal conclusions therein. This argument is completely without merit.

Initially, Appellants note that the district court's erroneous legal conclusions of January 31, 1992 were reiterated in the March 19, 1992 Order from which a separate Notice of Appeal was filed. Consequently, Appellants may properly challenge those conclusions.

Moreover, 28 U.S.C. § 1253 provides only for an appeal to this Court from an order "granting or denying . . . an interlocutory or permanent injunction . . . ." The January 31, 1992 Opinion and Order did not declare invalid or enjoin the 1991 plan of apportionment. Rather, the district court simply directed the Apportionment Board to "justfy" the creation of minority controlled districts and to submit a complete factual record to the court. *At most*, the January 31, 1992 Opinion and Order was a grant of an interlocutory injunction, and may not have been appealable at all.

It is fundamental that an appeal from a three-judge federal court, pursuant to 28 U.S.C. § 1253, brings the entire case before this Court. *Fusari v. Steinberg*, 419 U.S. 379, 387 n.13 (1975). See also *Supreme Court of Virginia v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 737 n.16 (1980). In *White v. Regester*, 412 U.S. 755 (1973), a three-judge district court declared the state's plan for the Texas House of Representatives unconstitutional, but permitted the 1972 election to go forward under the state's plan except for two counties. With regard to these two counties, the district court entered an injunction requiring multi-member districts to be reconstituted into single-member districts for the 1972 election. The state defendants appealed to this Court pur-

suant to 28 U.S.C. § 1253, and challenged both the injunction and the declaration that the entire plan was invalid. This Court summarily disposed of the ensuing jurisdictional challenge by holding that the appeal from the injunction, under 28 U.S.C. § 1253, also entitled the appellants to a review of the district court's accompanying declaration that the plan was invalid statewide. 412 U.S. at 761-762.

Furthermore, the language of 28 U.S.C. § 1253 clearly provides for a *permissive appeal* from an interlocutory injunction granted by a three-judge federal district court. Contrary to Appellee's unsupported assertion that Appellants have waived the right to challenge any portion of the January 31, 1992 Opinion and Order, it is an elementary principle of federal civil procedure that where an appeal from an interlocutory order is permissive and no appeal is taken, the interlocutory order merges into the final decree and an appeal from the final judgment brings up for review all antecedent interlocutory orders. *Balla v. Idaho State Bd. of Corrections*, 869 F.2d 461, 469 (9th Cir. 1989). See also *Arthur v. Nyquist*, 547 F.2d 7, 9 (2d Cir. 1976); *Yamamoto v. Omiya*, 564 F.2d 1319, 1325 n.11 (9th Cir. 1977); *Barfield v. Brierton*, 883 F.2d 923, 931 (11th Cir. 1989).[3]

In the present case, the district court's January 31, 1992 Opinion and Order was clearly interlocutory in nature because it did not finally rule upon the merits of any of Appellees' claims. Appellants were simply directed to "justify" their plan. Failure to appeal from this inter-

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[3] Even a cursory reading of the March 19, 1992 *Stipulation*, App. at 153a, belies Appellees' assertion that Appellants stipulated "that so much of the case as related to the January 31, 1991 decision of the trial court was not before the Supreme Court on appeal." *Appellees' Motion to Dismiss or Affirm* at 16. Rather, it is clear that Appellants simply stipulated to the dismissal of the appeal from that order. Appellants have consistently taken the position that the *issues* related to the district court's January 31, 1992 Opinion and Order are not waived.

locutory order does not, therefore, prohibit Appellants from challenging its conclusions in this appeal.

III. THE DISTRICT COURT ERRONEOUSLY CONCLUDED THAT DEFENDANTS FAILED, UNDER THE TOTALITY OF THE CIRCUMSTANCES TEST, TO JUSTIFY THEIR CREATION OF MAJORITY-MINORITY DISTRICTS IN THE 1991 PLAN OF APPORTIONMENT

Even if Appellants were required to "justify" their creation of minority controlled districts under this Court's decision in *Thornburg v. Gingles*, 478 U.S. 30 (1986), Appellees incorrectly assert that they failed to do so. Appellees argue that Appellants failed to establish the presence of significant racial bloc voting (or to even conduct a bivariate ecological regression analysis) and the inability of minority candidates to be elected. This is simply inaccurate.[4]

Dr. Gary King, Professor of Government at Harvard University, Director of the Harvard Data Center, and a nationally recognized expert in the field, conducted a bivariate ecological regression analysis and testified as to the presence of legally significant racial bloc voting before the district court on December 17, 1991. He repeated that testimony, and in fact expanded it to include an analysis of the advantage of running as an incumbent, at the Apportionment Board hearings on February 11 and 18, 1992. The Board relied upon Dr. King's credible testimony when it found the existence of racial bloc voting. See *Findings and Conclusions*, App. at 191a-194a, 205a-

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[4] Prior to the district court's Opinion and Order of January 31, 1992, Tilling informally concluded that such analysis supported the creation of minority controlled districts in Ohio. He reached this conclusion based upon his own extensive personal experience in Ohio politics, the testimony presented at the fifteen public hearings throughout the state, and his comprehensive discussions with minority leaders throughout the reapportionment process. Contrary to the district court's conclusion of January 31, 1992, such lay and non-expert testimony is sufficient to support the creation of minority controlled districts. *Hall v. Holder*, 955 F.2d 1563, 1570-71 (11th Cir. 1992).

206a, 222a-230a (Ohio Apportionment Board Feb. 18, 1992). Thus, contrary to Appellees' assertion, there was ample evidence of racial bloc voting supporting the creation of minority controlled districts under the 1991 plan of apportionment.

Furthermore, Appellants did not draw minority controlled districts by completely disregarding the success of some minority legislative candidates in Ohio.[5] Rather, Appellants drew legislative districts without regard to particular legislators' status as incumbents and fully cognizant of the fact that minorities running to succeed current incumbent legislators would not have the advantage of running as incumbents. *Findings and Conclusions*, App. at 227a-228a (Ohio Apportionment Board Feb. 18, 1992). Consequently, the Appellees' assertion, as well as the district court's holding, that Appellants failed to "justify" their creation of minority controlled districts is simply without merit.

IV. A DISTRICT COURT MAY NOT APPOINT A SPECIAL MASTER TO REDRAW STATE LEGISLATIVE DISTRICTS WITHOUT FIRST AFFORDING THE STATE'S APPORTIONING OFFICIALS A REASONABLE OPPORTUNITY TO ADOPT A SUBSTITUTE PLAN

Appellees did not discuss this issue in their *Motion to Dismiss or Affirm* and accordngly, no response is required.

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[5] Appellees incorrectly advise the Court that "[u]nder the 1981 apportionment plan, the black population in the black legislators' districts ranged from 38.5% to 53.19% . . . ." *Appellees' Motion to Dismiss or Affirm* at 9. Indeed, three African-American legislators, Representatives James, Prentiss, and Whalen, were elected from districts under the 1981 plan which had black populations of 74.8%, 90.1%, and 94.6% respectively. *Quilter v. Voinovich*, No. 5:91CV-2219, App. at 96a, 115a (N.D.Ohio Feb. 3, 1992) (Dowd, J., dissenting); *Findings and Conclusions*, App. at 177a, 187a, 222a, 226a, 261a, 265a (Ohio Apportionment Board Feb. 18, 1992). Failure to reduce the relative black populations in these districts would most likely have resulted in a legal challenge to these districts as "packing" minority voters in violation of § 2 of the Voting Rights Act.

V. THE DISTRICT COURT'S HOLDING THAT THE APPORTIONMENT BOARD VIOLATED THE FIFTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IS ERRONEOUS AND MUST BE REVERSED

As previously noted, there is a complete absence of facts supporting the district court's finding that the 1991 plan of apportionment violated the Fifteenth Amendment to the United States Constitution. Indeed, the only citation to "facts" contained in Appellees' *Motion to Dismiss or Affirm* is to *Plaintiffs' Proposed Findings of Fact*,—findings that were never adopted by the district court. See *Appellees' Motion to Dismiss or Affirm* at nn. 15-29.

From these misleading citations to *proposed* findings, Appellees suggest that Tilling drew minority controlled districts as part of a scheme to construct a "racial gerrymander." This is simply incorrect. Although Tilling had been urged by persons not involved in drafting the apportionment plan to use the requirements of the Voting Rights Act for partisan political advantage, the uncontroverted testimony was that Appellants were not influenced by these attempts. *Deposition of James R. Tilling* at 81 (November 22, 1991). Indeed, Dr. King testified that the 1991 plan of apportionment was statistically biased in favor of neither party. *Findings and Conclusions*, App. at 252a-254a (Ohio Apportionment Board Feb. 18, 1992).

As previously noted, it is inconceivable that Appellants adopted the 1991 plan of apportionment with the intent of discriminating against minorities when the plan adopted for Ohio's urban counties was the result of extensive consultation and negotiations with the minority community and was, prior to the negotiations concerning Cuyahoga County and the February 18, 1992 technical amendments, identical to that submitted by the Ohio NAACP. Accordingly, the district court's finding of a Fifteenth Amendment violation cannot stand.

VI. THE DISTRICT COURT'S FINDING OF A VIOLATION OF THE FOURTEENTH AMENDMENT IS ERRONEOUS AND MUST BE REVERSED

Appellees repeat the district court's error of assuming a violation of the Fourteenth Amendment simply because the districts were not within plus or minus 5% of the ideal population. Like the district court, Appellees offer no analysis of the total deviation in excess of 10% as required by this Court in *Mahan v. Howell*, 410 U.S. 315 (1973), and *Connor v. Finch*, 431 U.S. 407 (1977). Such analysis would have revealed that Ohio's longstanding policy of respecting political subdivision boundaries where reasonably possible justified the total deviation of only 13.81% in the 1991 plan of apportionment.[6] Accordingly, the district court's finding of a violation of the Fourteenth Amendment must be reversed.

CONCLUSION

For the reasons stated, Appellants respectfully request this Court to deny Appellees' Motion to Dismiss Appeal and to Affirm Ruling of Trial Court, and to note probable jurisdiction in this appeal.

Respectfully submitted,

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DATED: May 15, 1992

[6] Indeed, the Ohio Supreme Court's technical amendments to the 1991 plan of apportionment were mostly directed to reuniting political subdivisions which had erroneously been split between two districts.

JOINT

APPENDIX

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JOINT APPENDIX

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
(Akron)

No. 5:91-CV-2219

QUILTER, *et al.*

v.

VOINOVICH, *et al.*

RELEVANT DOCKET ENTRIES

Date		PROCEEDINGS
11/1/91	1	COMPLAINT (Summons(es), magistrate consent form issued) (24 pgs) (jr)
		* * * *
11/5/91	5	MOTION by Richard Cordray, Paul Mechling, Ronald Gerberry, Mary Abel to intervene as pltfs (4+exh pgs) (jr)
		* * * *
11/7/91	7	ORDER: Case assigned to panel of Judge Alvin I. Krenzler and Judge Nathanial R. Jones and Senior Judge John W. Peck to hear & determine this procdg (issued on 11/7/91) (lp) (jr)
		* * * *
11/8/91	12	ORDER: denying motion for temporary restraining order until further of of the Ct [6-1] denying motion for preliminary injunction until further ord of the Ct [6-2] granting motion to intervene as pltfs [5-1] Paul Mechling, Mary Ronald Gerberry, Richard

Date		PROCEEDINGS
		Cordray (issued on 11/8/91) (3 pgs) Judge Nathaniel R. Jones, Circuit Judge & John W. Senior Circuit Judge (jr) [Entry date 11/14/91] [Edit date 11/14/91]
11/8/91	16	INTERVENOR'S COMPLAINT by intervenor-plaintiffs' (20 pgs) (jr) [Entry date 11/14/91]
		* * * *
11/14/91	13	ORDER: sched trial on the merits for 10:00 a.m. on 12/3/91 in the 4th floor Courtromm of the U.S. Courthous, Cincinnati (issued on 11/14/91 (2 pgs) Circuit Judge Nathaniel R. Jones, Senior Circuit Judge John W. Pecki, Judge Alvin I. Krenzler (jr)
		* * * *
11/14/91	15	ANSWER to Complaint by defts' (18 pgs) (jr)
11/14/91	17	ANSWER to intervenors Complaint by defendant George V Voinovich, defendant Stanley J Aronoff, defendant Robert A Taft II, defendant James R Tilling (16+exh pgs) (jr)
11/14/91	18	REPORT on stat conf: Purpose of stat conf was to discuss with cnsl the various iss in the case which were major litigation, issues raised by the pldgs, issues to be tried, stips, disc, ref to Master or Mag. Judge, abstention, length of tr, expert witnesses, rule 23 class certification, tr or hrg date of 12/3/91 & the best manner of procdg. (issued on 11/15/91) (4 pgs) Judge Alvin I. Krenzler (jr) [Entry date 11/15/91]
		* * * *

Date		PROCEEDINGS
11/18/91	26	ORDER: Purs to Administrative Ord No. 141 this case is transferred to Judge David D. Dowd Jr. (issued 11/18/91 (1 p) (Judge Alvin I. Krenzler & Chief Judge Thomas D. Lambros (jr)
		* * * *
11/25/91	31	ORDER: That Judge David D. Dowd replace Judge Alvin I. Krenzler as a member of the three-judge panel—in view of the fact that Judge Krenzler has withdrawn from the panel. (Chief Judge Merritt-U.S.C.A. 6th Circuit) (1 pgs) (fax copy) (md) [Edit date 11/25/91]
		* * * *
12/3/91	46	MINUTES of proceedings before Judge David D. Dowd Jr., U.S. District Judge; Judge John W. Peck, U.S. Circuit Judge; Judge Nathaniel R. Jones, U.S. Circuit Judge. Court reporter Zengler. Trial began. Opening statements. Motion for order to abstain from resolving OH Constitutional iss [34-1] denied; Motion for leave to file its first ams complt to add named pla William L. Mallory [27-1] granted; Motion to certify—ruling reserved [34-2]; Motion for protective order moot; Dates to resp to mots of disc reserved until further ord of the Court. Cont to 12/17/91 at 9:00 a.m. Time: '5 hrs. (1 pgs) (jp) [Entry date 12/05/91]
12/5/91	47	AMENDED COMPLAINT by plaintiff [1-1]; adding William L Mallory as pla (26 pgs) (jp)
		* * * *

Date		PROCEEDINGS
12 16 91	99	ORDER denying motion to continue tr [95-1]. FURTHER the Court will consider the concerns expressed by dfts in the mot for cont at the conclusion of the hrg sched for 12/17/91 (issued on 12/16/91) (1 pgs) Judge David D. Dowd Jr. (jp)
		* * * *
12/18 91	118	MINUTES of proceedings before Judge David D. Dowd Jr., US Dist Judge; Judge Nathaniel Jones, US Circuit Judge; Judge John Peck, US Circuit Judge. Court reporter Joan Zengler. Continuation trial held on 12/17/91. Presentation of plas. Opening statement of Thomas Atkin & Armistead Gilliam. Presentation of dfts—Orla Collier. Findings of fact due 12/30/91. Iss briefed by 1/6/92. Time: 7 hrs. (2 pgs) (jp) [Edit date 12/18/91]
		* * * *
12/24/91	132	ORDER denying plas' motion to stay state court procdgs [97-1] (issued on 12/24/91) (2 pgs) Judge David D. Dowd Jr. (jp) [Entry date 12/26/91]
		* * * *
1/31/92	145	OPINION & ORDER that the Board is ord to reconsider the Plan (faxed 1/31/92) (issued on 2/3/92) (53 pgs) Circuit Judge Nathaniel Jones, Senior Circuit Judge John Peck, joined; Judge David D. Dowd Jr., dissented (jp) [Entry date 02/03/92]
2/3/92	146	ORDER The majority opinion and the dissesnt were filed 1/31/92. The dissent made ref to Appendix 2. However, Appendix 2 was still undergoing final review. Appendix 2 is now complete and the Clerk is directed to file the same and to forward copies to counsel of record and to Judge Jones and Judge Peck (issued on 2/3/92) (76 pgs) Judge David D. Dowd Jr. (pma)

Date		PROCEEDINGS
2/19/92	147	NOTICE by defendants of filing record (3 pgs) (Attached to notice are: Exh A—Findings & Conclusions of the Board dated 2/18/92; Exh B—Transc of Board Hrg of 2/11/92; Exh C—Transc of Board Hrg of 2/18/92) (jp) [Edit date 02/19/92]
		* * * *
2/26/92	156	ORDER granting plas lv until 11:00 a.m. on 3/6/92 to file a memo in resp to the 2/19/92 filing of dfts, FURTHER that a copy of the plas' memo be delivered to the chambers of each of the three judges on this panel by noon on 3/6/92, FURTHER upon recpt of the plas' resp, the Court will consider this case at iss, FURTHER it is the present view of this Court that an addl hrg, as req by plas, will srv no useful purpose, FURTHER Clerk to fax a copy of this ord to counsel of record. (issued on 2/26/92) (2 pgs) Judge David D. Dowd Jr. (jp)
		* * * *
3/5/92	159	ORDER granting dfts' motion for leave to file brf in resp to memo that plas have until 3/6/92 to file [158-1], FURTHER dfts granted lv to file a memo in opp to plas' memo providing same is filed w/Clerks Office in Akron by 3:00 p.m. on 3/9/92 & copies of memo are to be delivered to chambers of each of the three judges on the panel by 4:00 p.m. on 3/9/92. (issued on 3/5/92) (1 pgs) Judge David D. Dowd Jr. (jp)
		* * * *
3/10/92	163	ORDER re apportionment plan & appt Special Master. (faxed on 3/10/92 & mailed on 3/11/92) (9 pgs) Senior Circuit Judge John W. Peck, Circuit Judge Nathaniel R. Jones; Dissenting, Judge David D. Dowd Jr. (jp) [Entry date 03/11/92]

Date		PROCEEDINGS
3/11/92	164	NOTICE of appeal by dfts George V Voinovich, Stanley J Aronoff, Robert A Taft II, & James R Tilling re orders [163-1], [145-1] (cc: all counsel and the Supreme Court of the US on 3/13/92) fee paid (2 pgs) (fm) [Entry date 03/13/92]
		* * * *
3/16/92	169	ORDER & subp to produce software & data files to Special Master (see ord for details). (issued on 3/16/92) (faxed 3/16/92) Judge John W. Peck (4 pgs) (jp) [Entry date 03/17/92]
		* * * *
3/19/92	173	FINDINGS of fact, suppl memo of law & order. (faxed to counsel on 3/19/92) Nathaniel R. Jones, Circuit Judge; John W. Peck, Senior Circuit Judge (19 pgs) (jp) [Entry date 03/20/92]
3/25/92	174	NOTICE of appeal by dfts George V Voinovich, Stanley J Aronoff, Robert A Taft II, & James R Tilling re findings of fact [173-1] (cc: all counsel and the Supreme Court of the US notified on 3/27/92) fee status paid (2 pgs) (fm) [Entry date 03/27/92] [Edit date 03/27/92]
		* * * *
3/31/92	176	ORDER that said primary election is hereby resched to be held 9/8/92, FURTHER that the Secy of the State of OH be & he hereby is enjoined to do all such acts as may be necessary for the holding of such primary election 9/8/92. (issued on 3/31/92) (1 pgs) Judge Nathaniel R. Jones; Senior Judge John W. Peck (jp)

Date		PROCEEDINGS
4/1/92	178	NOTICE of appeal by dfts George V Voinovich, Stanley J Aronoff, Robert A Taft II, & James R Tilling re order [176-1] (cc: all counsel and the Supreme Court of the U.S. on 4/3/92) fee status paid (2 pgs) (fm) [Entry date 04/03/92]
		* * * *
4/3/92	177	STIPULATION and ORDER upon agreement of ptys that portion of the appeal to the US Supreme Court from the 1/31/92 ord of the Dist Ct shall be dism, FURTHER this stip does not affect the appeal from the 3/10/92 ord. (issued on 4/3/92) (2 pgs) Judge David D. Dowd Jr (jp)
		* * * *
4/24/92	183	STATUS Report by special master Lawrence A Kane & req for instructions (3 pgs) (jp)
		* * * *
4/28/92	187	INSTRUCTIONS to the Special Master re stat rpt. (issued on 4/28/92) (3 pgs) Judge Nathaniel R. Jones; Judge John W. Peck (jp)
		* * * *
4/30/92	189	ORDER granting plas' motion for stat conf [181-1], FURTHER counsel for ptys are to appear on 5/4/92 at 2:00 p.m. in the United States Courthouse in Cincinnati, FURTHER denying plas' motion for stay pending stat conf result [188-1] (faxed on 4/30/92) (issued on 5/1/92) (5 pgs) Judge Nathaniel R. Jones; Judge John W. Peck (jp) [Entry date 05/01/92]
		* * * *

Date		PROCEEDINGS
5/5/92	191	ORDER directing Clerk to docket the two exhs offered by dfts at the 5/4/92 hrg: 13 pg docmt entitled "Technical Amendments to the Ohio 1991 Plan of Apportionment" & the 5/4/92 affvt of John F. Bender, Chief Elections Counsel for the OH Secy of State Bob Taft. (issued on 5/6/92) (1 pg) Judge David D. Dowd Jr. (jp) [Entry date 05/06/92]
		* * * *
5/5/92	194	OPINION AND ORDER directing Secy of State to accept new candidate filings in any Ohio House or Senate district reconfigured by the 2/18/92 amendments, FURTHER the filing deadline is 5/8/92 at 4:00 p.m., FURTHER the Secy of State is empowered to take all actions, notwithstanding any state election law or time period to the contrary, to assure that any candidates filing under this court-ord grace period are included in the 6/2/92 primary election. Judge Nathaniel R. Jones; Judge John W. Peck; DISSENTING, with the concern that potential candidates for the OH General Assembly were not given a fair opportunity to declare for the office, either as a candidate for the House of Representatives or as a candidate for the Senate, because the 1991 Plan as revised was not adopted until 2/18/92 & the deadline for filing was a scant two days later. [166-1] Judge David D. Dowd, Jr. (faxed on 5/5/92) (issued on 5/6/92) (18 pgs) (jp) [Entry date 05/06/92]
		* * * *

DEPOSITION OF JAMES R. TILLING
(November 20, 1991)
[Docket #102]

[32] Q. Can you be more precise than the month?

A. I would like to be, but no. I mean basically the entire work of drawing this map commenced in the latter part of August and went through October 1st.

Q. Did you do correlation and regression analysis?

A. No, we did not.

Q. Why not?

A. Mainly because of time. As I have indicated, we have a very time-consuming process simply to obtain [33] the data that we needed to do it. And prior to the 1990 census, 1980 information, there was no computer method available for matching census geography with election data.

And, you know, we got a late start on this process because the Census Bureau didn't decide until July 15th of 1991 whether or not it was going to use adjusted data. And that and difficulty of preparing a unified data base meant that we did not have data to begin this process until the end of August of this year, which gave us a very compressed time frame to work in.

* * * *

[35] Q. Let me see what you have got in your computer now. You have got elections on a statewide basis?

A. Correct.

Q. Do you have them on a legislative district basis?

A. They can be aggregated that way, right.

Q. And you have that going back to—

A. To 1982.

* * * *

[37] Q. Let's try it again. Start with the premise that we have 1981 boundaries and 1991 boundaries.

A. You are asking me if we did an analysis of racial voting for the state legislative districts. The answer is yes, we did.

Q. You did.

A. Yes.

Q. You did—where did you do it? Did you do legislative districts, for example, in Cleveland?

A. Yes. We did basically, we looked at the votes for minority representatives to the General Assembly to see, you know, what we could tell about racial patterns of voting. For example, in Columbus—as Bob knows it's a little difficult in Cleveland because the current district has such an enormously large percentage of black voters in it that you won't get much of a disparity. But there are some places, for example Bratenaw is in a black senate district.

Q. Well it is fair to say that throughout the State you analyzed where blacks were located, correct?

A. Correct.

[38] Q. By reference to census?

A. Correct.

Q. And you looked at how they voted.

A. That's correct.

Q. And you did that in Cleveland.

A. Recognizing, of course, that the 1990 census data doesn't correspond directly to the old districts.

Q. I understand. But within that range of error which we can assume exists—

A. Right.

Q. —you looked at the patterns of black voting in the major metropolitan areas in Ohio, correct?

A. Yes, um-hum.

Q. Did you do regression analysis?

A. No.

Q. Again was this because of the pressure of time?

A. Yes.

Q. But you did evaluate black voting patterns in—let me just take the major cities—in Cuyahoga County and Summit County and Hamilton County, Franklin County, Montgomery County, Lucas County.

A. To the best of my knowledge, yes.

Q. All right. For what purpose did you analyze these black voting patterns?

A. To try to show that or to satisfy ourselves [39] that there was a preference of black voters for black candidates where that choice is available, but most importantly that the white majority or component of that district that was made up of white voters did not support the black candidate in anywhere near those numbers, effectively to show there was polarized racial block voting.

Q. Did you end up with any writings on that point?

A. No. Again, we were under enormous time pressure to get the plan out on time.

Q. So you have nothing in writing which would demonstrate what your conclusions were.

A. That's correct.

Q. Did you observe that there were a number of black legislators being elected with white crossover votes in Ohio?

A. Yes.

Q. Seven of them, for example.

A. Um-hum.

Q. And is it your contention there was racial block voting in each of those seven legislators' districts?

A. There are some, yes, but obviously there is always a crossover of white vote.

Q. "It is legally significant racial block voting [40] that is menitoned in the Jingles case:" do you recall that?

A. Yes.

Q. Did you find legally significant racial block voting in connection with the seven districts where the minorities were elected with less than a majority of minority population?

MR. COLLIER: Could I have that—excuse me, could you read back that question?

(Question read.)

A. Well, I think that is a very difficult question to answer. I think even among the judges who have written in this area the question of what is legally significant is

a matter for some difference of opinion, and I think one of the things that we all know to be the keys is that several of those minority representatives, two of them that I am aware of immediately, were appointed to fill a vacancy replacing white legislators and therefore able to run as incumbents in districts that were strongly Democratic, and at least two others succeeded to the office upon the death of their spouse and therefore had not only the advantages of incumbents but the advantage of name and party.

So it's a difficult question to answer. But what we did find was that given the opportunity there is [41] a much higher percentage of black vote for black candidates than white vote for black candidates.

Q. All right. We will come back to that. Do you understand the process of regression analysis for racial block voting?

A. It's been a long time since I taught political science and statistics was not my forte, so I would not consider myself to be an expert in regression analysis.

Q. You could not conduct such an analysis yourself at least at this point without refreshing yourself?

A. I think that is a fair statement.

Q. And you made no effort to do that, correct?

A. That's correct.

Q. No one on the staff that worked for you made any effort to do the regression analysis?

A. That's correct.

Q. Who worked for you, Mr. Tilling?

A. Really two individuals, Bob Clegg, who is director of operations for the Senate Republican caucus, and David Potts, who is one of our caucus administrative assistants.

Q. What did Mr. Clegg do?

A. Well, he and Dave Potts together basically handled the computer side of the operation. And I directed them basically, you know, where to draw lines [42] and they did that and prepared demographic reports. And so they

basically served as my two assistants in this process, basically doing what I asked them to do.

* * * *

[50] Q. I am not suggesting that we should ignore federal supremacy. What I am asking you is whether or not you were conscious of drawing lines to comply with the Voting Rights Act, whether or not those lines would conflict with the Ohio Constitution lines.

Let me make—give you an example.

A. Okay.

Q. Let's assume, for example, all of Ohio was white, there were no blacks living in Ohio. Then there would be presumably little or no reason to draw—and they are all the same religion, all the same ethnic background, so forth. There would be no reason except the Ohio Constitutional provisions to govern the drawing of lines, correct, with that hypothetical? You would not have to go to some federal guideline.

A. I don't know that you can say that. I hate to answer hypothetical questions. They always have a habit of getting people in touble. I mean regardless of—

[51] Q. What would be the reason to depart from the Ohio Constitution?

A. Well, anything that, in any instance where something in the Ohio Constitution ran afoul of the United States Constitution then you would have a problem and have to be disregarded because, as you said, in the supremacy clause it indicates that.

Q. But the Voting Rights Act deals with race.

A. Right.

Q. And I have taken race out of the mixture. So with race out of the mixture here—

A. Well, it does deal with other things besides race. I mean there is race, there is ethnic origin, there is language that basically deals with a whole class of minority interests.

Q. Protected class, I should put it more correctly. But absent the existence of protected class, there is no

reason why you couldn't simply follow the Ohio Constitution, true?

A. Well, as I said before, I think we did follow the Ohio Constitution.

Q. Well, Mr. Tilling, there were times when you would cross boundaries in order to comply with your understanding of the Voting Rights Act, correct?

[52] A. That's correct.

Q. And if there had been no Voting Rights Act requirement you would not have had to cross those boundaries, true?

A. Without doing an encyclopedic review of the entire process I think that's probably correct.

Q. We can't give you each place that it occurred but it occurred from time to time?

A. Right.

Q. And when you thought that that occurred you followed the basic concept of federal supremacy.

A. Correct.

Q. And you drew the line as you perceived the Voting Rights Act requirement.

A. That's right.

* * * *

[79] Q. Picking up on your point about blacks [80] statewide, do you know the approximate population of blacks statewide?

A. Slightly under 11 percent.

Q. And so they are slightly overpopulated in terms of whether or not there is a one-to-one ratio in the House of Representatives and slightly underpopulated in the Senate; is that correct?

A. Correct.

Q. Have you any understanding, and I use that in the broadest sense, of voting patterns of blacks in terms of their political preferences?

A. Are you talking about statewide?

Q. Yeah, statewide, when they are registered Democrats, for example, or registered Republicans.

A. Yeah, I think that most experts recognize that blacks tend to support the Democratic Party in overwhelming percentages unless they have a good reason not to.

Q. Do you have any sense of what the figures are in Ohio of that support for the Democratic Party in general? And I am not trying to ask you to be specific in a race.

A. Well, again it's hard to answer that question in general because—

Q. Give me what your knowledge is.

[81] A. My knowledge is that unless a particular candidate or campaign makes an effort to appeal to minority voters they are likely to vote Democratic in percentages from 85 to 95 percent.

Q. You were aware of that fact, it was in your memory in your head at the time you drew districts, true?

A. Correct. But I would also say in many of our races for the Ohio Senate we have made a special attempt to appeal to minority voters. And one of the reasons we have been successful is because we have done a better job and have done substantially better than the statewide average in terms of appealing to black voters.

Q. In the Senate races; is that what you are saying?

A. In the State Senate races, that's right.

Q. You have not, however, elected a black senator.

A. That's correct. We have had several run in the primaries and several run as candidates, but we have not elected a black to the Senate since John Bowen here in Columbus, which was before the time I came to the Senate.

* * * *

[92] Q. Who made these choices saying yes or no because you have to make choices on which census block would be included and which would not.

A. I did.

Q. You did in every instance?

A. Uh-huh.

Q. Did you have any assistance in doing that?

A. I had assistance from Bob Clegg and David Potts in the sense that they worked the screen and I looked and basically we tried to—initially what we were trying to do because it's the only data that we had was to draw the districts based on census geography, knew at some point we were going to have to make a conversion to [93] political boundaries to conform with the Constitution's wards and precincts, but here we were basically concerned with trying to use the data to draw majority/minority districts strictly based on census geography.

Now, some of the census geography for some of the suburbs is the same, so you could see some of that on that map, but basically decisions were mine.

* * * *

[97] Q. Essentially black population displayed on this map, is that right?

A. Black voting age population, right.

Q. Yes. And that's information that just shows you where blacks are located, correct?

A. Correct. As I indicated I think earlier when we came to begin work, in each of the urban counties with a substantial minority population we put up on the screen first the minority population being minority voting age population and Hispanic population just to give us an idea of where the concentrations of minorities were.

Q. So you would look at something like Exhibit 22 for each of the major urban areas as you were working them?

A. That is correct.

Q. And that would be the first thing you did.

A. Correct.

* * * *

[100] Q. When you think in terms of electing a candidate of choice, that's your understanding of what the Voting Rights Act requires.

A. That's correct.

Q. That minorities have the opportunity, equal opportunity to elect candidates of choice, correct?

A. Correct.

* * * *

Q. Was there a range in which you thought that minorities, a range of concentration of minorities in a particular district which you thought would give them the opportunity to elect a candidate of their choice? What ranges were you thinking about?

A. We didn't have any set figure in mind. That's [101] something to look at individually on a case-by-case basis.

Q. Very specific, region by region?

A. I'd say the answer to that varies area by area, correct.

Q. Area by area.

A. Right.

Q. Something you need to examine, in terms of the Voting Rights Act parlance, practical realities in a specific geographic area; is that correct?

A. Uh-huh, yes.

* * * *

[127] Q. Was there ultimately any hiring of Mr. Johnson, Floyd Johnson as a consultant, to your knowledge?

A. Yes.

Q. Who hired him?

A. The Senate did.

Q. At $7,800?

A. I believe we made it for combination Apportionment Board related, that is, State, House and Senate districting work and congressional districting work and I believe we settled on a figure of $10,000.

[128] Q. Was that in a contract?

A. Yes.

* * * *

Q. And has money been paid to Mr. Johnson?

A. Yes, I believe so.

Q. How much?
A. I really don't know.
Q. Who would know that?
A. Probably the Clerk of the Senate.

* * * *

[129] Q. When was that paid?
A. To the best of my knowledge it was paid in installments.
Q. In what period of time?
A. Over several months. As I said, I don't have the contract. I'm not totally certain of that but over the last two or three months probably.

* * * *

Q. Was there any discussion as to whether this was a potential conflict of interest?
A. Yes. In fact, I talked to the national office of NAACP in particular to make certain that they would not feel that this was some conflict of interest.
Q. Who did you talk to?
A. Clifford Collins. In fact, Floyd also talked to the State President and basically the answer was that as long as he was not represented to work for NAACP and [130] advising us on the drawing of our districts, then it would not be a conflict of interest as far as they were concerned.

* * * *

[132] Q. But again he, when he gave you the benefit of his views, was not speaking for the NAACP.
A. That's correct.

* * * *

[138] Q. Is it your testimony then that the Montgomery plan was really drawn by the NAACP?
A. I believe that's the case.
Q. Who drew it?
A. Well, again. I'm assuming that Floyd Johnson was the overall architect. He's from Dayton and I think

understands that area and who he might or might not have consulted with in Montgomery County or these other counties I'm not totally aware of but I do know he was involved with drawing of the Montgomery County district —districts I should say.

Q. You don't know anyone else that worked with him on it?

A. For Montgomery County?

Q. Yes. Mr. Jackson worked with Mr. Johnson, if you know?

A. You'll have to ask him about that specifically, but I did, in talking to Jeff, I indicated to him as I did to several other Republican county chairmen that I talked to that these were the guidelines that we had to operate under. You ought to go look at the Ohio [139] Constitution and read its provisions and that we had already indicated a willingness to work with the NAACP and told him who Floyd was and that he was from Dayton and suggested that he get in touch with him, so I'm assuming there was contact there.

Q. But you don't know, is that what you're telling me?

A. Well, subsequent to that, as the NAACP submitted a plan, and as I indicated before Floyd worked on the computers, the public access computers here, my understanding is that he also received some assistance from Jeff in that endeavor but personally I'm not aware of what that consisted of.

Q. Received some assistance from Jeff and, I missed—

A. From Jeff Jacobson. I'm not sure what that assistance consisted of.

* * * *

Q. I guess I'm just trying to exhaust your [140] recollection if you can recall how that intelligence came to you.

A. As I said, I recommend to Jeff that he contact Floyd. It's conceivable I could have talked to Floyd and

asked him how he was coming and followed up on that conversation. I don't remember doing that.

* * * *

[145] Q. Is that what Mr. Johnson said to you?

A. Basically, his interpretation in our conversations was similar to mine and basically we agreed that that was the operating philosophy that we should adopt.

Q. Had he done any racial block voting analysis?

A. I believe so, but you'll have to ask him to be sure.

Q. Had he done any regression analysis?

A. Again, I don't have any way of answering that so you'd have to ask him.

Q. You have no present knowledge?

A. Correct.

Q. You do not recall him telling you that he had done any such?

A. That's correct.

Q. Had he done any correlation studies?

A. Again, I have no direct way of answering that.

* * * *

[148] Q. So you did no political index investigation of what the results would be.

A. That's correct.

Q. In Montgomery County. That information would have been available to Mr. Jacobson, however, on the [149] data base, correct?

A. Uh-huh, as far as I know. Actually it was available to anyone.

Q. It would have been available to you?

A. Yes.

Q. Or any member of the public, correct?

A. Correct.

Q. Do you know whether Mr. Jacobson made any evaluation along those lines?

A. No, I don't.

Q. Do you know whether the Hamilton County chairman made any evaluation along the lines of the political advantages that would come out of the redistricting of Hamilton County?

A. No, I do not.

Q. As I understand it, you're indifferent to that subject anyway.

A. That's correct. It had no bearing on our work whatsoever.

* * * *

[160] Q. You're aware that Ohio is, I believe as you said, is not a preclearance state.

A. That's correct?

Q. And preclearance means that a state would be required under Section 5 of the act before there is any change in their law concerning a reapportionment state to have it precleared through the Attorney General, is that right?

A. That's correct.

Q. And the areas to which that would apply would be such areas as of November 1964 had a literacy test and less than 50 percent of the eligible voters were registered. Is that the test?

A. I believe there is 17 jurisdictions, my recollection tells me throughout the United states. Most of them are southern states but there are—

Q. There are pockets other places?

A. New York City and areas like that but primarily they are southern states.

* * * *

[161] Q. Was it your position that Section 2 of the act requires you wherever possible to draw districts between 51 percent and 65 percent?

A. My interpretation of Section 2 is read in conjunction with Article—or I should say Amendment 14 and 15 of the U.S. Constitution that we should do everything in our power not to dilute minority voting [162] strength.

MR. GILLIAM: Read the question back, please.

(Question read.)

A. Well, Section 2 requires us not to dilute minority voting strength and a series of court cases that have been decided basically say that where there is evidence of racial block voting and where the candidates supported by the white majority most often prevails in open counties, that where a minority is compact enough that a majority minority district can be drawn, that district should be drawn.

* * * *

[168] Q. Was it your determination that there had been violations of the Voting Rights Act in specific areas of Ohio and to redress those violations you in fact redrew certain boundaries?

A. I don't think I'm a competent person to judge whether Voting Rights Act violations occurred.

* * * *

[173] Q. Did you also determine that blacks as a group have less opportunity than others to elect representatives of their choices?

A. Yes.

[174] Q. And where did you determine that that was true?

A. From the same sets of information that we have just discussed. I mean the easiest example to use—because unlike many of the others it doesn't cut across party lines and introduce a potentially confounding variable of party allegience—is the Jackson vote for primary.

Q. That is a confounding variable, did you say?

A. It confounded the data.

Q. I see.

A. So basically you can get an example of voter preference within a political party, particularly when the class of voters that we're talking about does tend to support that party in very large numbers, then you get a pretty clear notion of whether or not the candidate can

elect—or whether or not the voters can elect a candidate of their choice.

Q. Let me ask you this. Would you consider that William Mallory was the candidate of choice in the district from which he ran, has been running?

A. I believe that would be a correct statement.

Q. Would you consider that Otto Beatty was the candidate of choice?

A. Certainly the evidence suggests that.

Q. Ray Miller?

[175] A. Yes.

Q. Vern Sykes?

A. Again the evidence suggests those people have been elected in those districts, and therefore at least in the elections we're referring to they were preferred by a majority of the voters given the choices that were available to them on the ballot.

Q. And been elected for some long years, true?

A. Some have and some have not.

Q. Would you conclude that Casey Jones was the candidate of choice?

A. As far as I can tell, and basically everything that we learned up in the public hearings in Lucas County, the answer is yes.

Q. And would you conclude that Helen Rankin was a candidate of choice?

A. That's a little bit harder to answer since she took over for her husband when he died, and therefore had the advantage of both name recognition and party and race. But certainly the evidence since that time admits that she has been successful.

Q. Rhine McLin, candidate of choice?

A. Same. Her father was one of the best known politicians in Montgomery County, and powerful, and she was able to fill that vacancy.

* * * *

[177] Q. Now, did you examine—well, let me just ask a few more questions here.

Is there any black candidate—I am sorry, black legislator—in Ohio who is not the candidate of choice from their district, as far as you know?

A. As far as I know, no. But I think that begs the question because the real question is why are there no blacks elected in districts without a sizeable black population.

Q. There are districts in which blacks are elected [178] with as low as 35 percent, correct?

A. That's correct.

Q. Tom Roberts being 36.1?

A. That's correct.

Q. We have Ray Miller in the 30s, correct?

A. That's correct.

Q. Casey Jones in the 30s, correct?

A. It might be a little higher than that.

Q. Vern Sykes?

A. Again toward the high end of the 30s, low 40s.

Q. Doesn't that strike you as remarkable that there is some white votes for a black candidate; did you notice that in the state?

A. Yes, we did. It is not remarkable. It reflects the way the districts were drawn in 1981 to make sure there is a correlation between black voters and strong Democratic districts.

* * * *

[184] Q. Mr. Tilling, I have a very simple question.

With respect to the voting of representatives, all of the representatives in the House, you in fact did not examine the voting records specifically of those representatives to determine if they were representatives of choice, did you?

MR. COLLIER: Are we talking about black representatives now?

Q. I am talking about all representatives.

Q. You made no such determination.

A. We did not examine the voting records of all 99 House incumbents, that's correct.

Q. And can you name the voting records of any specific representative that you looked at to determine if that person was a representative of choice?

A. Well, again I think that is an irrelevant question.

Q. It is not irrelevant. It is my question.

A. It doesn't matter whether it is your question or not. It is an irrelevant question. Because—

[185] Q. Mr. Tilling, let me stop you. You are not to decide what is relevant or irrelevant. You are to answer the question unless you are instructed otherwise.

MR. COLLIER: He is trying to do that. You can go ahead and finish.

Q. I am asking you a very simple question.

MR. COLLIER: Well, do you want him to answer the last question to the best of his ability?

MR. GILLIAM: I am going to withdraw that and ask him another question.

Q. I am asking you a very simple question. Did you examine the voting record of any single representative in the House of Representatives to determine if they were responsive to the minority community on the basis of their voting record? You can answer that yes or no.

A. The answer is no. I don't think it's a relevant question, but the answer is no.

Q. Now, did anyone else do that, if you know?

A. Not to my knowledge.

• • • •

[206] Q. You used the word "if." Did you try to draw districts that the Republican Party would benefit?

A. No, I did not.

Q. Looking at Exhibit 3, I noticed that 20 Democrats were paired with each other. Did you notice that?

A. Not until afterwards.

• • • •

[207] Q. Did you draw the plan for Lucas County which did in fact pair Casey Jones with Mr. Czarcinski?

A. Yes.

Q. But unconscious of the fact that you had paired them?

A. Absolutely.

Q. And you were unconscious of the fact that you had paired Judy Campbell—I am sorry, Judy Sheerer. Jane Campbell, and Representative Bergansky?

A. Correct.

Q. And you were unconscious of the fact that you had paired Vern Riffe and Representative Malone.

A. The answer to that is yes, although I did have a sense that Representative Malone lived in the southern part of Lawrence County, but exactly where he lived I don't know.

Q. So you really didn't know you had done that?

A. That's correct.

Q. You were unconscious of the fact you had paired Stinziano and Cordray.

[208] A. Yes, that's correct too.

Q. And you were unconscious of the fact that you had paired Guthrie, Mechling and Abel. Is this funny, sir?

A. No, I just—I would prefer you to use some other term than "unconscious." Unaware would be a little better. Unconscious has an unfortunate connotation to it.

* * * *

[212] Q. In your view is it possible for a white representative to be the representative of choice for a black community?

A. That would be up to the black community to decide, but it's certainly possible, yes.

* * * *

DEPOSITION OF JAMES R. TILLING
(November 22, 1991)
[Docket #103]

[9] Q. Now, with respect to the Jackson analysis, did you do any analysis of those results other than just simply observe what they were?

A. No, we did not.

* * * *

[13] Q. Were people asking you to make specific boundary lines drawn for example?

A. Sure, we got many suggestions for specific boundaries, either on a district-by-district basis or portions of districts.

Q. Do you recall any such requests from Republican legislators?

A. Sure.

Q. Who?

A. Well, as I indicated many of them contacted us about their own particular districts. I'm sure that I [14] cannot give you an exhaustive list because many of them were either phone calls or personal conversations and as I said they all tend to blend in together.

* * * *

[22] Q. Did they give you documentation?

A. No, they did not. By "they" I mean black elected Democrats of Ohio. They did not give us documentation. The only input we got was from NAACP.

* * * *

[35] Q. Are you familiar with Deposition Exhibit No. 84, Mr. Tilling?

A. Yes, I am.

Q. Would you identify it for the record, please.

A. It's an article that appeared in Congressional Quarterly, I guess, a couple years ago, November of 1989, talking about redistricting in Ohio. In this particular context, they're talking about congressional [36] redistricting.

Q. They state that you hold two official titles: chief executive officer (an administrative position) and chief of staff for the GOP caucus; is that correct?

A. That's correct.

Q. And as chief of the Staff of the GOP caucus you develop policy positions for leadership, correct?

A. When they listen to me, yes.

Q. You're also director of the GOP caucus campaign committee?

A. Such as it is. Actually, that's probably a misnomer. The campaign committee is run by co-chairman and those have always, since I've been here, been our No. 1 and 2 leaders, Paul Gilmore and Stan Aronoff most of that time and most recently Senator Aronoff and Senator Hobson and Senator Hobson and Senator Feighan.

Q. The statement says, "but his after hours job, director of the GOP caucus campaign committee, has earned him the most notice." Is that an accurate statement?

A. That's what the article says. And as far as being the No. 1 staff person I also am the No. 1 staff person for the campaign committee.

* * * *

[39] Q. Did you do any studies of the community in the sense of going out into the community? I know your 15 hearings too many places, but other than those, did you go into the communities and conduct service?

A. No, we did not.

Q. Did you do any issues research in connection with the 1991 apportionment?

A. No.

* * * *

[48] Q. Did you use the Governor's race, the Attorney General's race to evaluate any political impact of any of the redistricting that was drawn?

MR. DELEONE: May I just interrupt for a moment. You're asking him a general question now not related to this document; is that correct?

MR. GILLIAM: That's correct.
MR. DELEONE: All right.
A. Let me see if I got—
MR. DELEONE: Read it back to him.
(Question read back.)
A. I think I indicated Wednesday that there were two or three occasions where we did look at political data, but as I also think I indicated at that time we did not use political data to guide us in the drawing of the map in its entirety.
Q. I'm asking you if you used that data to evaluate the political composition of districts after they were drawn?
[49] A. After they were drawn I believe that we did, yes.

* * * *

[62] Q. Did you discuss that with anybody before the plans were drawn and adopted? In other words, let me [63] put it rather simply. When you move black population into a district you obviously deplete black population in another district or another area. And my question is did you discuss that fact with anybody at all before the plan was drawn and adopted?
A. I don't think so. It sounds like a simple question but it really is not, and I'm trying to jog my memory to the best that I can.
Q. Take your time. It's an important question.
A. Well, I can recall at one or more panels of our reapportionment task force and and also I believe a meeting that I attended in Washington that was sponsored by the National Republican Legislators Association, where the issue of complying with the Voting Rights Act and supporting court cases and equal protection clause was discussed, and it has been reported in the press, I've read the articles, that there is some sort of master conspiracy between Republicans and blacks so that by increasing the number of majority minority districts, which is obviously a goal that black leaders are interested in

and black community has a very powerful stake in, that the consequence of that would be to allow Republicans to elect more Republican legislators in outlining districts. That subject is not a secret. As I said it's been widely reported in the press and was the [64] subject of several panel discussions at National Conference of State Legislators.

It certainly has been the position articulated by spokesmen from the Democratic National Committee and several of them have been on these panels with their counterparts from the Republican National Committee talking about the Voting Rights Act and its implications. So to the best of my knowledge, I have been in several forums where this issue and the consequences have been discussed.

* * * *

[65] Q. With respect to the answer you just gave me, in that answer you referred to a couple of meetings. One was the meeting of Republican legislators?

A. I think the Republican Legislative Leaders Association I believe is what it's called. They had a meeting in Washington as I recall which they asked me to come and give a presentation on a certain topic.

Q. What was your topic?

A. I believe the topic was building a record. They asked for people to come in who were representatives of minority caucuses and then they wanted me to come in as somebody that was a representative of a majority caucus talk about how one might document cases that might ultimately go to court particularly on the issue of voting rights.

Q. And did you speak on that subject?

A. Yes.

[66] Q. Do you have notes of that speech?

A. No.

Q. Well, did you have them at one time?

A. No.

Q. What did you say about how one might document a case that might go to court?

A. Well, the primary content of the panel was directed to those states who would be preparing cases to challenge an existing apportionment plan, and it is my understanding and belief that in preparing a case to challenge the actions of a duly constituted apportioning body, you have to have a very substantial body of data to prove that what they did was not correct.

Q. A Voting Rights Act violation.

A. That's correct. If however you are in charge of that process, then the burden of proof falls on those people challenging your plan to prove that what you did is inconsistent with your constitutional responsibilities.

And what I really talked about was some of the things that we were trying to do in Ohio that never been done before, such as opening up the process by having public hearings, providing a unified data base so that that would remove one area from potential legal confrontation, that is, all sides would have access to [67] the same data base, and that we were going to have a period where all plans had to be submitted by a certain date. They would then be open to public discussion and then on the basis of that corrections or changes could be made, then there would be more public inpu and ultimately the Apportionment Board could make a vote. So in terms of our discussing from a majority State's position what the record needs, we try to distinguish between challenges to an apportionment plan coming from Plaintiffs as opposed to actually drawing a plan within the confines of constitution and the statutes, and then in particular, because this stems from Voting Rights Act cases, the need to give the minority community and others interested in this process more access than had been granted in the past and that basically was the thrust of what I tried to get across.

* * * *

[70] Q. Well, identify the document for me, please.

MR. DELEONE: If he can.

A. Well, it's a typewritten sheet which is headed "Republican Opprotunities" I believe if memory serves me correctly, it also—

MR. DELEONE: Let me inquire. Did you prepare it?

THE WITNESS: No.

MR. GILLIAM: I would like an answer to this question.

MR. DELEONE: All right. Go ahead.

Q. Would you identify it, please.

A. Yes, to the best of my ability it is a document that relates to a map of the State of Ohio and it was submitted to me, I guess, and purported to be somebody's best guess of how a Republican gerrymander that maximized Republican Opportunities to take control of the House might be devised.

• • • •

[71] Q. (By Mr. Gilliam) All right. It did come from your files, true?

A. That's correct. It was given to me during the course of our work on the apportionment process. It is not a document that I prepared. It is something that [72] was given to me.

Q. Who gave it to you?

A. I am not sure that I can answer that question exactly.

Q. Well, what's your best answer?

A. I am trying to recall here because I think I know what you are getting at and you are going to be disappointed.

MR. DELEONE: Just answer but finish your answer.

A. At the beginning of this process what I was hoping to be able to do was to establish what would be a worst case scenario for a Republican gerrymander and a worst case scenario for a Democrat gerrymander. And I believe

that I talked to and I want to think about this for a minute. I think I am right in this.

I believe I talked to State Representative Joan Lawrence who had been involved for some time with an individual named David Horn from Athens who has been involved in reapportionment and redistricting for at least 15 years, maybe more. In fact, has done research and has actually written papers and presented various conferences. And I think that she—well, I think I asked her whether or not he would be participating in the public hearing down in Athens because when I first [73] became acquainted with them, he was involved in trying to secure passage of what originally was called the Dale Locker Amendment, Locker being a Democrat State Representative from Anna at the time. And Dale was a proponent as was David Horn of a mathematical system for doing redistricting and doing reapportionment. And because we were going to have public hearings at this time and because this is a somewhat novel approach to the process, I think I asked Joan if she could work with David on these projects, whether or not she knew whether he was going to testify.

And I believe she told me that it was her understanding that he was not and he still was, you know, in favor of his mathematical approach to redistricting and really thought the current system was something that needed to be changed. And I believe in the course of his research, he prepared, and again this is the best of my ability, he prepared a Republican gerrymander and I think he considered the 1971 Democrat apportionment map to be the sort of model for a Democrat gerrymander.

And I asked Joan because, as I said, I had this idea that I would like to be able to set out what the parameters are or could be on each side, show the extreme that could be accomplished by a Democrat and [74] extreme that could be accomplished by a Republican so that when I made a presentation to the Apportionment Board I could show them a whole series of plans and say if you want

a Republican gerrymander, here is what you could get. If you want a Democrat gerrymander, here is what you get. If you want a fair map, and basically give them a series of alternatives that they might choose from because at the beginning of this process nobody really had any idea how many plans might be submitted by how many groups. And I had made it clear that I felt it was the Apportionment Board's responsibility that—to pick the best plan befone them and so therefore I wanted to try to prepare a whole series of alternatives and explain to them in some fashion what each one of these alternatives was and then let them decide.

So she—and again, this is to the best of my recollection—she checked with Dave Horn or somebody in his group and in fact they did have a plan that they had looked at and she brought it up for me to look at and initially I thought about putting it into our computer and producing it so that it would be in a form comparable to any of the other plans that we had before us.

But ultimately as I think I have testified [75] before, by the time we got the data on the unified data base from Cleveland State and actually began drawing plans there simply was no time to do that. So it was a plan that came into my possession. It purported to be somebody's best guess of how to gerrymander the state. I had an idea about what I could use it for, but ultimately we never did anything with it.

MR. DELEONE: Can we just break for 30 seconds, please?

(Discussion off the record.)

(Last sentence of last answer read.)

Q. So to the best of your understanding, Mr. David Horn is the person who created the Republican opportunities document which is in front of you; is that correct?

A. To the best of my understanding, yes.

Q. And when would that have happened?

A. Geez, I can't really say. I think it either—he either had already done it and Joan mentioned it to me in passing that it was something he had worked on. It was just kind of ironic because he is a Democrat of some longstanding, but he wanted it as I was interested in getting it for local purposes. So he either had it in his possession and she was aware of it or she thought he might be working on something. So I really can't [76] pinpoint it much except it was either in existence in some form before August or subsequent to a conversation it was completed and given to me, and I got it some time—to the best of my knowledge it came in some time in the middle of September when we were beginning to get to work on our plans, and I am pretty sure that it didn't come in any later than that because if it had come in after the mid point of September, it would have been obvious to me there is no way we could have put a totally separate plan of somebody else's and any expectation of finishing our own.

Q. And Joan Lawrence is who again?

A. She is a State Representative from Galena, Delaware County.

Q. Is she a Republican?

A. Yes.

* * * *

[80] Q. Did you show this to anyone else?

[81] A. No.

Q. Discuss it with anyone else?

A. No.

Q. Just put it in your file?

A. Uh-huh.

Q. You read it?

A. Yeah, I looked at it and I set it aside in our room with the idea that we would try and put it in the machine and see what it really looked like but we never got to it so effectively it was just gathering dust.

Q. And have you had any conversations with Mr. Horn since then?

A. I didn't have a conversation with him in the first place and certainly not since.

Q. All right. Did he actually give you this document or did Joan Lawrence give it to you?

A. I can't remember. I know I talked—let me put it this way. I believe I talked to Joan and I am pretty sure about that and it came to my office and I believe that, you know, she in one way or another got it there but, you know, I can't vouch that it came. It was delivered when I was not there, but since I had asked her to see if she could get it I assume it came from her. But I can't be positive of that.

* * * *

[Exhibit 86 to Deposition of James R. Tilling (November 22, 1991)]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 91CV-2219

JUDGE NATHANIEL R. JONES
JUDGE JOHN W. PECK and
JUDGE ALVIN I. KRENZLER

BARNEY QUILTER, *et al.*,
Plaintiffs,

v.

GEORGE V. VOINOVICH, *et al.*,
Defendants.

AFFIDAVIT OF LAURA A. SANOM

STATE OF OHIO)
) ss:
COUNTY OF MONTGOMERY)

Laura A. Sanom, being first sworn upon oath, says:

1. I am an attorney licensed to practice law in the State of Ohio. I am an attorney with Faruki Gilliam & Ireland and one of the attorneys representing the Plaintiffs in the above-referenced matter. I was the attorney

responsible for reviewing Mr. Tilling's documents. I am making this affidavit based upon personal knowledge and am competent to testify to the matters stated below.

2. On Tuesday, November 19, 1991, I reviewed one box of documents in an office adjacent to Chief of Staff for the Senate Majority Leader, James R. Tilling. Defense counsel, Mr. Vic Goodman, represented to me that the box of documents that I was reviewing had been produced from the files of Mr. James Tilling.

3. At approximately 3:00 p.m. on Tuesday, November 19, 1991, I found the attached document (exhibit A) loose in the box of documents produced by Mr. Tilling. The document was located among numerous 1990 census papers. I had the attached document copied immediately by the representative from Records Deposition Service, who was copying Mr. Tilling's documents for me in the hallway outside Mr. Tilling's office.

/s/ Laura A. Sanom
LAURA A. SANOM

Sworn to before me and subscribed in my presence by Laura A. Sanom to the best of her information, knowledge and belief, this 22d day of November, 1991.

/s/ Brenda K. Hinkle
Notary Public
In and for the State of Ohio
My Commission Expires April 15, 1995

REPUBLICAN OPPORTUNITIES

There exist 19 such "opportunities." Some are better than others.

Cuyahoga Co.: Create new, open districts 5 and 17. Attach incumbent Kasputis onto new HD 12 in south suburbs. To do so requires 3 pairings of Demo. incumbents, as suggested on map. HD 5 is a cinch. HD 17 is problematical. Opportunities = 2.

Franklin Co.: Pack as many Demos as possible into 2 Black-majority inner-city HDS. Divide remaining Demos evenly among 7 Republican-dominated HDs. Pair Conley with Davidson. Pair Stinziano with Thomas. Add some of Madison Co. to provide more Republicans to mix. Make sure Cordray is in heavily-Republican district and recruit good candidate. Create 3 new, open, districts. Opportunities = 4.

Hamilton Co.: Pack as many Demos as possible into 2 Black-majority inner-city HDs. Divide remaining Demos evenly among 4 Republican-dominated HDs. Pair Tranter and Luebbers with strong Republican incumbents in strongly Republican districts. Opportunities = 2

Montgomery Co.: Pack as many Demos as possible into 2 Black-majority inner city HDs having incumbents Roberts and McLin. Break up Hickey's district, pairing him with either Guerra or Corbin in heavily-Republican HD. Create new, open HD in southern and western townships. Opportunity = 1.

Summit Co. Lucas Co. No opportunities. Protect Republican incumbents Watkins and Greenwood.

Stark & Mahoning Cos.: Create new HD 70 with "spill-over" containing Demo. incumbent Vukovich and GOP incumbent Johnson. Johnson will have decided advantage. Pack all Demos. possible into Healey's district. Add as many Republicans as possible to district of Demo. Johnny

Maier, and recruit strong Republican challenger. Opportunities = 2.

Lorain Co. Pair Bara and Walsh in new HD 52, creating new, open. Republican-dominated HD 72. Opportunity = 1.

Clark Co. Maximum districts rule says there must be one HD wholly within county, but doesn't say how lines must be drawn. So split Hartley's urban, Springfield base between new HD 61 and "spillover" district 76, weakening him. Opportunity = 1.

Richland Co. Maximum districts rule applies, as with Clark Co. Split urban Mansfield between new HD 65 and "spillover" district 77, weakening Sawyer. Opportunity = 1.

Create 5 new, open districts in the "rural" counties by creating 3 Demo.-Demo. pairs, and pairing 2 other Demos with strong Republican incumbents in Republican-dominated districts: (Opportunities = 5)

HD 85: pair Demos. Deering and Wise, creating new, open HD 69.

HD 89: Pair Demos. Riffe and Malone, creating new, open HD 92.

HD 99: Pair Demos. Secrest and Cera, creating new, open HD 95

HD 78: Pair Demo. Mechling with Repub. Myers, creating new, open HD 91.

HD 87: Pair Demo. Weston with Repub. Lawrence, creating new, open HD 86.

Make good on 12 of these opportunities and you know the consequences.

This plan meets all the enforceable provisions of Article XI of the Ohio constitution.

[Exhibit 89 to Deposition of James R. Tilling (November 22, 1991)]

District Report for Plan 'planl' House
Thu Sep 26 14:46:21 1991

Target Population = 0

District	Persons	% Rep Go	% Rep So	% Rep Ag	% Black	% Hisp
HD13	105433	41.52	35.27	32.26	5.95	15.78
HD17	76428	56.32	45.44	43.55	1.75	1.64
HD19	150154	49.74	40.81	37.38	2.46	1.81
Averages	110672	49.19	40.51	37.73	3.39	6.41

[Exhibit 92 to Deposition of James R. Tilling (November 22, 1991)]

District Report for Plan 'planl' Senate
Wed Sep 25 13:23:17 1991

Target Population = 0

District	Persons	% Rep Go	% Rep So	% Rep Ag	% Black	% Hisp
01	343356	64.57	62.58	60.21	0.60	3.25
02	339129	57.26	56.11	50.01	3.14	2.31
03	329381	60.74	62.36	60.36	6.89	0.96
04	331592	63.60	63.34	59.03	4.01	0.47
05	320460	46.32	45.82	42.45	29.43	0.73
06	333374	64.15	61.61	59.15	2.78	0.75
07	335118	68.77	69.80	62.99	3.40	0.58
08	328122	67.98	68.46	60.29	3.47	0.50
09	316897	39.94	43.15	35.02	50.73	0.67
10	321278	62.96	58.43	57.64	7.91	0.80
11	325884	44.72	44.81	36.28	20.10	4.03
12	323467	65.17	62.12	59.17	4.38	0.76
13	338107	55.50	50.01	47.22	6.40	4.76
14	333382	60.17	61.17	57.07	1.24	0.38
15	319419	34.24	36.06	35.69	37.78	0.98
16	330308	60.39	62.53	60.88	3.70	0.95
17	337339	52.52	54.37	55.97	2.98	0.35
18	315320	59.35	51.40	48.69	2.11	0.95
19	332454	61.91	54.69	59.12	3.77	0.64
20	338635	52.71	54.44	54.75	1.94	0.30
21	316114	33.59	23.71	21.17	62.93	1.29
22	323068	64.64	56.92	52.80	2.16	0.56
23	333305	52.24	43.27	40.92	3.38	6.19
24	340038	60.78	50.09	46.85	1.22	1.08
25	323430	44.14	33.39	27.76	40.58	0.74
26	330373	61.60	58.73	56.63	2.32	1.95
27	320167	59.28	56.15	47.45	4.14	0.54

28	337408	48.94	46.67	39.58	15.36	0.62
29	328318	58.32	53.11	49.63	6.68	0.78
30	329787	46.35	41.97	41.44	2.40	0.38
31	332443	52.97	56.97	56.58	1.50	0.50
32	308879	49.25	44.98	43.01	5.27	0.57
33	330594	45.08	40.08	41.50	12.98	1.89
Averages	328695	55.16	52.40	49.31	10.84	1.28

House to Senate Assignments

Senate	House
01:	HD82, HD83, HD86
02:	H04, HD51, HD53
03:	HD24, HD25, HD26
04:	HD58, HD59, HD60
05:	HD38, HR39, HR43
06:	HD40, HD41, HD42
07:	H02, HD35, HD36

DEPOSITION OF JAMES R. TILLING
(November 25, 1991)

[Docket #101]

[39] Q. I may have gotten that out of order. Exhibit 107, can you identify that, please?

A. Yes. This—I think I mentioned this the other day. I asked when we were getting this process off the ground, I asked Terry Casey, executive director of the Franklin County Republican Party, if he could give me a synopsis of the minority voting strength in Cuyahoga County by census tract, and this is a report that he sent over to me.

* * * *

[50] Q. The next document appears to be a series of handwritten notes.

Deposition Exhibit 120 appears to be your notes, Mr. Tilling, of the process of reapportionment that you followed in actually drawing the lines. Can you identify it, please?

* * * *

A. It does, it is my handwriting. It does look like my notes as we prepared the plan of apportionment for the State. It looks like what I was trying to do was go down the relevant articles of the Constitution [51] and describe what we did at each step.

Q. And having done that you then actually go through the process of describing the various districts to be drawn; is that correct?

A. That's correct.

* * * *

[Exhibit 94 to Deposition of James R. Tilling (November 25, 1991)]

[illegible]

August 21st 1991

James Tillings
Chief Executive Officer
Ohio State Senate
Statehouse
Columbus, Ohio 43266

Dear Mr. Tillings:

Please accept this correspondence as the framework for a mini consulting agreement to provide working capital for me to access the technical information and computerized data available on the terminals in Columbus. My specific objective will be to look at minority districts and influence districts for Congressional, Senatorial and House of Representatives.

I will:

a.) Research and minipulate population data in voting tracts in Cuyahoga, Franklin and Hamilton Counties for Congressional Resdistricting of Ohio's nineteen district delegation to the next Congress. My goal would be to determine how minority voters could maximize their influence and assist in drawing districts within the framework of the Voting Rights Act.

b.) Research on the possibility of State Senate districts and influence districts for Minorities living in Franklin, Montgomery, Hamilton, Lucas and Cuyahoga Counties.

c.) Minipulate lines for new Ohio State Representative districts in those counties where their is significant minority voting population. The total contract amount for this report is $7,000 (or a total of 260 hours at a rate of $30.00 per hour).

I will prepare a written report on research work along with an invoice. However, since the clock is already running and recognizing the importance of this project to the minority population of the State of Ohio, I am requesting that should you approve this agreement please foward 25% ($1,950.00) of the contract to cover certain out of pocket expenses such as:

a.) Transportation to and from Columbus, Cincinnati and Toledo.

b.) Purchase of Large Precinct, Census tract and Ward Maps of these Counties.

c.) Purchase of computer time to plot voter registrations and voter turn out in the targeted districts.

d.) Purchase of miscellaneous disc paper and supplies.

e.) Purchase postage and express mail and telephone tolls for this short term project.

Thank you for the opportunity to work with you on this project.

Sincerely,

/s/ Floyd B. Johnson
FLOYD B. JOHNSON

cc. Jim Daniels, State President NAACP
Jesse Gooding, President Dayton Chapter NAACP
Frank Allison, President
Cincinnati Chapter NAACP

[Exhibit 100 (part—pages 7, 29-30) to
Deposition of James R. Tilling (November 25, 1991)]

AFRO-AMERICAN PERCENTAGE OF LEGISLATIVE DISTRICTS

	Senate Plans			House Plans			
County % Afro-American Population	Current (1981) Plan	Minimum Fragments	Compactness Threshold	Current (1981) Plan	Minimum Fragements	Fully Nested	"Republican Gerrymander"
Cuyahoga 340,989 = 22.8 1,498,295	*SD 21: 60.7 SD 25: 36.2	SD 21: 19.7 SD 22: 74.6 SD 24: 8.0	SD 21: 10.2 SD 22: 59.7 SD 23: 33.3	*HD 12: 72.7 *HD 14: 85.8 HD 15: 24.5 *HD 16: 91.6 HD 17: 17.9 HD 18: 10.7	HD 11: 15.5 HD 12: 63.6 HD 14: 64.6 HD 15: 43.7 HD 16: 92.1 HD 17: 22.4 HD 18: 10.0	HD 86: 24.7 HD 87: 22.8 HD 122: 48.7 HD 123: 63.8 HD 124: 76.9 HD 125: 80.8 HD 126: 58.7	HD 11: 54.3 HD 14: 77.6 HD 15: 52.5 HD 16: 53.9 HD 18: 56.9
Hamilton 165,994 = 19.0 873,136	*SD 9: 40.1	SD 8: 10.5 SD 9: 32.0	Same as Minimum Fragments	*HD 23: 42.2 HD 24: 27.1 *HD 25: 51.5	HD 22: 14.1 HD 23: 47.3 HD 24: 28.4 HD 25: 39.0 HD 27: 15.8	HD 1: 27.9 HD 2: 24.6 HD 3: 14.2 HD 9: 12.9 HD 10: 14.6 HD 11: 37.6 HD 12: 54.6	HD 23: 53.4 HD 25: 50.1
Franklin 131,016 = 15.1 869,109	SD 15: 26.3 SD 16: 12.1	SD 15: 27.7 SD 16: 5.6	Same as Minimum Fragments	*HD 29: 32.5 HD 30: 11.7 *HD 31: 44.9 HD 32: 20.7	HD 29: 18.5 HD 31: 14.0 HD 32: 30.8 HD 33: 40.7 HD 34: 11.4	HD 67: 10.8 HD 68: 46.1 HD 69: 27.5 HD 72: 48.3	HD 29: 53.8 HD 31: 38.5
Montgomery 94,561 = 16.5 571,697	SD 5: SD 6:	SD 5: 26.0	Same as Minimum Fragments	*HD 36: 47.5 *HD 37: 27.4	HD 37: 67.2 HD 40: 8.6	HD 13: 61.6 HD 14: 39.4	HD 36: 33.1 HD 37: 46.5
Summit 56,831 = 10.8 524,472	- -	SD 28: 16.0	Same as Minimum Fragments	*HD 42: 33.2	HD 42: 23.0 HD 43: 24.5 HD 44: 13.9	HD 80: 29.1 HD 82: 22.9	HD 42: 43.9
Lucas 63,901 = 13.5 471,741	- -	SD 11: 17.6	Same as Minimum Fragments	*HD 45: 40.2	HD 45: 34.7 HD 46: 13.2	HD 52: 41.7 HD 53: 13.0	HD 45: 51.8
Mahoning 41,075 = 14.2 289,487	- -	- -	- -	HD 52: 11.0 HD 53: 25.8	HD 52: 15.5 HD 53: 23.3	HD 113: 18.4 HD 114: 28.3	HD 52: 35.3

LET'S PRETEND

Suppose that in 1978 Republican Ted Brown had been re-elected secretary of state and the Ohio Republican Party had, therefore, won control of the apportionment board. Suppose that the Republicans had, in 1981, retained David L. Horn to prepare for them a districting plan for the Ohio house that would do everything possible to hurt Democrats, but still comply with the requirements of Article XI of the Ohio constitution.

Following is the plan he might have prepared. All its districts are within the ±5% population equality requirement; all are contiguous; all comply with the maximum districts and spillover rules. Here is a brief rationale for the plan's notable features.

Cuyahoga Co. Political demographics make it impossible to create more than one safe Republican district out of this county's fourteen. However, Rep. Deffiler (HD 12) had been appointed to a marginal district vacated by Republican Rep. Pope and Rep. Dean (HD 17) had similarly inherited a seat vacated by Republican Rep. Katchidorian. The wisest course is to do all possible to shore up their districts. The best we can do is a new HD 12 with an Index of 48.4 and a new HD 17 also with an Index of 48.4. At least two incumbents must be paired, since the county lost population in the 1970s and must go from 16 seats to 14. Make Democrats absorb the 2-seat loss by pairing Sweeney and Colonna in HD 7; Boyle and Ike Thompson in HD 15; Fisher and John Thompson in HD 18. To insure having no problem with the civil rights laws create five Black-majority districts—two of them (HDs 15 & 18) at the expense of white, urban Democrats Boyle and Fisher. Create a Black majority in HD 15 by removing census tracts 1401 and 1405 (having a small percentage of Blacks) from Cleveland Hts. and attaching them to HD 19.

Hamilton Co. In this "Republican" county the strategy is to "pack" as much of the Democrat minority as possible into two heavily Democratic districts (HDs 23 & 25) with Black majorities. Then fragment the remaining Democrats into six Republican-dominated districts, getting rid of white Democratic incumbents Luebbers (HD 21) and Tranter (HD 27) by pairing them with Republican incumbents Pottenger and Fix in heavily Republican districts. Republican incumbent Rep. Mayer is kept out of Republican Rep. VanVyven's district by the arm of HD 22 which extends northeastward into Springfield Twp. to pick up her residence. Create Republican-oriented open HD 21.

Franklin Co. Another "Republican" county where the strategy is similar to that in Hamilton: "Pack" the Democrats into HDs 29 and 31, each with enhanced Black percentages. Fragment the remaining Democrats into six Republican-dominated districts, eliminating white Democratic incumbents Conley (HD 32) and Stinziano (HD 35) by pairing them with Republican incumbents Davidson and Deshler in Republican districts. Create Republican-oriented open districts 30 and 34.

Montgomery. More like Cuyahoga where it is difficult to create more than one safe Republican district, but where the 1980 GOP tide elected Reps. Ballweg (HD 38) and Guerra (HD 40) in Democratic-oriented districts. The need here is to protect these two unsafe incumbents. Give Ballweg the "Republican" southeast corner of the county and attach nearby incumbent Republican Corbin onto a new Republican district based in Warren and Clinton counties. Give Guerra the "best" remaining part of the county (Index = 43.9). Concentrate Democrats in HDs 36, 37, and 39. Pair Democratic incumbents Fries and Orlett in HD 37, with an enhanced (46.5%) Black population.

Summit/Portage. Another "Democratic" county where Republicans have little opportunity. Usually combined

with Portage Co. for districting purposes. Best thing to do is try and piece together the most Republican areas of both counties into one HD. Hard to do because those areas are scattered and to connect them requires "Democratic"-oriented corridors. HD 69 is such an attempt. It has an index of 46.3.

Lucas Co. Another "Democratic" county where the best option is to concede three safe Democratic districts (HDs 45, 46, 47) while protecting Republican incumbents Karmol (HD 48; Index = 43.6) and Galbraith (HD 70). Inclusion of census tract 65 puts Karmol's residence in HD 48. Enhance Black percentage in HD 45 from 40.2 to 51.8.

Stark/Mahoning. Maximum districts and spillover rules tend to require creation of six HDs out of these two counties combined. Best Republican option is to concentrate Democrats into two safe Mahoning Co. districts (HDs 52 & 53) and one safe Stark Co. district (HD 50). Give Stark Co. Republican incumbents Maier (HD 49) and Ash (HD 50) as low indices as possible. The "spike" of HD 51 (census tract 7132.02B) is to put Ash's residence in this district. Create "Republican" HD 71 from the spillover—one that can be held by incumbent Republican Rep. Johnson. Concentrate Mahoning Co. Blacks in HD 52, with an Afro-American percentage of 35.3.

Lorain. Another "Democratic" county that elected a Republican in 1980 (Rep. Bowman, HD 54) whose retention, without endangering fellow Republican incumbent Tansey, is the problem. Solution is to pack all Democrats possible into HD 55; then divide Democratic areas around Elyria between HDs 54 and 72, constituting each as a marginally "Republican" district (Indices 46.0 and 46.8).

Lake Co. Pack Democrats into HD 60 (Index = 61.1), creating adjoining HD 61 (Index 47.2) where Republicans have an opportunity.

Clark Co. Eliminate Democratic incumbent Hartley by excising Springfield inner city and attaching it to a rural district extending eastward—leaving Hartley in a Clark Co. district with an Index of 39.1

Richland/Erie. Concede re-election of Democratic incumbent Deering of Erie Co. and attach his base to the inner city of Mansfield by a southward-extending corridor into Richland County. This leaves incumbent Democratic Rep. Sherrod Brown (or his successor) in a Richland Co. district with an Index of 45.8, where prospects are not as bright.

Greene. Pair Democratic incumbent Zehner with Republican incumbent Haines in new HD 65 where Haines would have the advantage.

Southeast. Problem here is to enhance prospects for Rep. Ney in HD 99, who won upset victory in 1980 in a "Democratic" district over Democrat Wayne Hays. Best solution is to split Belmont County into four pieces, with the most Democratic townships being attached to HD 96 and HD 98 where there is no prospect of unseating Democratic incumbents Hinig and Bowers. This lowers Index of HD 99 from 53.2 to 47.7. Keep Republican incumbents Ross (HD 78) and Johnson (HD 95) out of each other's districts by splitting Muskingum and Guernsey counties. Protect incumbent Rep. Ball in HD 94 by lowering its index from 40.7 to 37.3. Create new open district by pairing Democratic Reps. Riffe and James in new HD 89.

Southwest and West. Eliminate Democratic incumbent Malott by pairing with Republican incumbent Nixon in HD 77 where advantage is with Nixon. Eliminate Democratic incumbent Locker by pairing with Republican incumbent Netzley in HD 84 where advantage is with Netzley.

[Exhibit 103 to Deposition of James R. Tilling (November 25, 1991)]

District Report for Plan 'planrepo' Senate
Fri Oct 18 08:30:44 1991

Target Population = 0

District	Persons	% NH Bl VAP	% Hisp VAP	% Rep Gov	% Rep Ag
01	34353822	0.52	2.62	64.49	60.09
02	33789970	2.80	1.90	57.25	50.02
03	32469423	6.63	0.89	60.77	60.42
04	33159202	3.62	0.42	63.57	59.03
05	32010155	27.64	0.72	45.40	41.41
06	32586635	2.06	0.62	64.32	59.33
07	33838563	2.84	0.47	68.07	62.27
08	32617416	5.81	0.45	66.95	59.15
09	31557715	43.61	0.68	42.54	37.85
10	32134697	7.79	0.70	62.91	57.60
11	32713835	17.45	3.11	44.69	36.25
12	33113112	3.95	0.64	65.28	59.42
13	34241059	5.52	3.84	55.60	47.37
14	33338199	1.19	0.33	60.14	57.04
15	32501761	32.92	0.95	34.54	35.94
16	32865196	3.65	0.90	60.55	60.98
17	33734399	3.24	0.32	52.47	55.88
18	31392478	1.88	0.79	59.36	48.69
19	32815047	3.55	0.52	61.77	59.03
20	33990782	1.90	0.26	49.56	51.46
21	31905887	60.72	1.38	33.36	20.71
22	32149548	1.82	0.49	64.75	52.91
23	34398920	2.71	4.77	49.71	38.44
24	32873643	0.65	0.77	62.79	48.81
25	32265572	35.93	0.66	44.25	28.02
26	33036892	2.30	1.60	61.48	56.59
27	32866108	3.87	0.47	58.94	47.19
28	32818275	13.65	0.56	49.14	39.72
29	32832214	5.76	0.72	58.32	49.66

Target Population = 0

District	Persons	% NH Bl VAP	% Hisp VAP	% Rep Gov	% Rep Ag
30	32712519	2.14	0.32	49.19	44.28
31	33179306	1.56	0.45	52.96	56.53
32	30894206	4.71	0.49	49.28	43.02
33	33058991	11.17	1.55	45.07	41.52
Averages	32855017	9.87	1.07	55.14	49.29

House to Senate Assignments

Senate	House
01:	82, 83, 86
02:	04, 51, 53
03:	24, 25, 26
04:	58, 59, 60
05:	38, 39, 43
06:	40, 41, 42
07:	02, 36, 37
08:	33, 34, 35
09:	30, 31, 32
10:	73, 74, 76
11:	49, 50, 52
12:	01, 84, 85
13:	61, 62, 63
14:	71, 72, 88
15:	21, 22, 23
16:	27, 28, 29
17:	91, 92, 94
18:	05, 69, 70
19:	79, 80, 93
20:	95, 96, 99
21:	08, 09, 10
22:	07, 15, 81
23:	13, 17, 19
24:	16, 18, 20
25:	11, 12, 14
26:	87, 89, 90
27:	45, 46, 47
28:	44, 48, 75
29:	54, 55, 56
30:	03, 97, 98
31:	06, 77, 78
32:	66, 67, 68
33:	57, 64, 65

[Exhibit 105 (part) to
Deposition of James R. Tilling (November 25, 1991)]

Oct 18 08:22 1991 Page 1

District Report for Plan 'planrepo' House
Fri Oct 18 08:22:33 1991

Target Population = 0

District	Persons	% NH Bl VAP	% Hisp VAP	% Rep Gov	% Rep Ag
01	10975504	10.01	1.00	64.95	58.76
02	11390898	2.53	0.42	68.35	63.39
03	10827598	1.23	0.30	51.83	48.12
04	11326903	1.08	2.07	57.90	52.11
05	9982101	2.79	1.19	51.75	45.79
06	10345102	1.27	0.41	58.12	58.94
07	10144168	1.39	0.35	65.05	58.18
08	10497208	61.19	0.70	34.23	20.63
09	10857253	58.12	0.84	36.25	22.25
10	10551426	63.09	2.69	28.06	18.52
11	10479949	40.43	0.83	42.54	25.41
12	10542387	64.96	0.51	29.21	17.76
13	11485945	2.17	8.82	44.31	34.03
14	11243236	6.83	0.64	56.66	37.37
15	10971395	3.21	0.60	65.11	48.76

• • • •

**[Exhibit 107 to
Deposition of James R. Tilling (November 25, 1991)]**

Franklin
County
Republican

TO: Jim Tilling

FROM: Terry Casey

		Total Population	Black Population	% Black
1.	38 Census Tracts have a Black majority	116,801	88,513	75.8%
2.	33 Census Tracts have 14-48% Black population, most in 25-30% category	97,708	27,496	28.1
3.	Other 181 Census Tracts have	746,928	36,831	4.9
4.	Total	961,437	152,840	15.9

Franklin County Republican Party/Northeast Corner,
North High & East Gay Streets
14 East Gay Street/Second Floor/Columbus, Ohio 43215/224-3939

[Exhibit 120 (part) to Deposition of James A. Tilling (November 25, 1991)]

Reapportionment—1991

Step 1 Total Ohio Population 10,847,115

Ratio of Representation for Ohio House of Representatives

Article XI 10,847,115 ÷ 99 = 109,567
Section 2 Ratio of Representation for Ohio Senate
10,847,115 ÷ 33 = 328,700

Step 2 Totals for ± 5% variance from ideal rate of representation

Article XI Ohio House of Representatives
Section 3 −5% = 104,089 +5% = 115,045
Article XI Ohio Senate
Section 4 −5% = 312,265 +5% = 345,135

Step 3 Determination of number of house of representatives (ratios)

Article XI district within each county
Section 8

1. Cuyahoga	1,412,140 ÷ 109,567 =	12.88
2. Franklin	961,437 ÷ 109,567 =	8.77
3. Hamilton	866,228 ÷ 109,567 =	7.9
4. Montgomery	573,809 ÷ 109,567 =	5.2
5. Summit	514,990 ÷ 109,567 =	4.7
6. Lucas	462,361 ÷ 109,567 =	4.2
7. Stark	367,585 ÷ 109,567 =	3.4
8. Butler	291,479 ÷ 109.567 =	2.7
9. Lorain	271,126 ÷ 109,567 =	2.5
10. Mahoning	264,806 ÷ 109,567 =	2.4
11. Trumbull	227,813 ÷ 109,567 =	2.1
12. Lake	215,499 ÷ 109,567 =	1.97
13. Clermont	150,187 ÷ 109,567 =	1.37
14. Clark	147,548 ÷ 109,567 =	1.35
15. Portage	142,585 ÷ 109,567 =	1.30
16. Greene	136,731 ÷ 109,567 =	1.25
17. Licking	128,300 ÷ 109,567 =	1.17
18. Richland	126,137 ÷ 109,567 =	1.15
19. Medina	122,354 ÷ 109,567 =	1.12

20. Warren	113,909 ÷ 109,567 =	1.04
21. Wood	113,269 ÷ 109,567 =	1.03
22. Allen	109,755 ÷ 109,567 =	1.002

Step 4 — Counties between ± 5% of the ratio of representation for

Article XI — The Ohio House of Representatives

Section 10(A)

Allen	109,755	H.D. #1
Warren	113,909	H.D. #2
Columbiana	108,276	H.D. #3
Wood	113,269	H.D. #4

Step 5 — Counties between 90 and 95% and 105 and 110% of the ratio of representation for the

Article XI — Ohio House of Representatives

Section 10(B)

Ashtabula	99,821	H.D. #5
Fairfield	103,461	H.D. #6
Wayne	101,461	H.D. #7

Step 6 — Cuyahoga—the largest county—draw

Article XI — representative districts—12 complete house

Section 10(C) — districts + .88 of < 13 ±

Display on Screen Minority Population of Cuyahoga County

a) Black
b) Hispanic

Draw Minority Districts

HD 8 1) Start as Cuyahoga River, downtown and go east along Lake Erie until minority population declines. This is HD 8

HD 9 2) From eastern boundary of HD 8 go south and west until we reach acceptable population—come in at between 95 to 99% of ideal ratio. [Includes City of Cleveland (part), East Cleveland, Cleveland Heights (all)

HD 10 3) Continue going west and south back towards the Cuyahoga River [mostly City of Cleveland, 2 tracts—Garfield]

HD 11 4. Return to east and south until population ratio is obtained. [Remainder of Cleveland, Shaker Hts, University Hts]

5. Go south to include remaining black tracts in

HD 12 Garfield Hts, Highland Hills, Warrensville Hts, North Randall, some city of Cleveland, Bedford Hts., Bedford, Maple Hts

HD 13 It may be possible to draw an influence district including remaining blacks and Hispanics. Return west and north toward the Cuyahoga River. Hispanic concentration begins near Lake Erie and tends to go South along or near the Cuyahoga River. Take in what is needed to reach ~95% of ideal size of house district.

This appears to exhaust our possibilities for influence and majority/minority districts.

Draw non-minority districts, beginning at eastern end of Cuyahoga county along the lake

HD 14 Part of Euclid, South Euclid, Richmond Hts., Lyndhurst and Mayfield Hts. Try to go "heavy" on population to make up for "light" majority-minority districts.

HD 15 Continue going south to Southern border of county then west thru Solon, Oakwood, Walton Hills, Valley View, Independence, Brecksville, Broadview Hts. Since this district already touches Medina County and two Senate districts in which it currently nests already includes all of Medina County, we will take the necessary "excess" population from Medina County to complete HD 15. [Hinckley, Granger, Sharon Township in Medina County]

HD 16 Return north to northwest corner of county and begin to move west and south along western boundary of county

HD 17 Go back to North, combine Rocky River, Lakewood and Fairview Park and some city of Cleveland to reach a population on the "heavy" side.

Go to lower southwest corner of county and go east and north avoiding Parma and Parma Hts until we reach a "heavy" population total. North

HD 18 — Royalton, Strongsville, Middleburg Hts, Brook Park, and some City of Cleveland

HD 19 — Go east to continue adding City of Cleveland down into Garfield Hts, etc to fill in area North of Parma and Parma Hts, trying to keep as much of those two suburbs together in the one remaining Cuyahoga county district

HD 20 — Remaining district is most of Parma, Parma Hts, Seven Hills and Brooklyn Hts.

Move to next most populous county—*Franklin*

Display map of minority population distribution

a) Blacks
b) Hispanics

Draw Minority Districts

HD 21 — Start with tracts in the downtown area and go North and east from that location until a "light" majority-minority district population is attained. Avoid primarily white Bexley and Whitehall

HD 22 — Returning to the downtown area, go south of Broad and east to create as close to a majority-minority district as possible. Keep it around 95% of ideal House population total. Avoid Bexley and Whitehall, which are mostly white areas

HD 23 — Beginning on North High Street (approximately), go south and west to build an influence district from the remaining areas of minority population. This district reaches the southern border of Franklin County and include Urbancrest and Grove City.

HD 24 — Move east along the southern border of Franklin County, then north to create a southern and eastern district along the eastern border of Franklin county. This district north from Hamilton and Madison Twps thru Reynoldsburg, far east parts of Columbus city, Jefferson Twp, Plain Township and Westerville.

HD 25 Next, beginning with Bexley and Whiteall, fill in the interior area of the eastern part of the county, including some city of Columbus, Gahanna, and Blendon Twp

HD 26 Moving west along the Northern border of the county, create a district from Minerva Park, thru northern Columbus Sharon Twp and Perry Twp. and pieces of Clinton Twp

HD 27 Come South thru Worthington, Riverlea, Sharon Twp (part) and part of the City of Columbus until population level is attained.

HD 28 Move thru Upper Arlington, Marble Cliff, Grandview Hts and City of Columbus, stopping at border of HD #23.

HD 29 Complete Franklin County districts by filling in western border of county and added needed population (approximately 22,000 people) from Pickaway County.

HAMILTON COUNTY—

HD 30 Starting with majority-minority districts, begin around the downtown area and configure a district including the greatest portion of the eastern segment of black population. Mostly City of Cincinnati

HD 31 Draw second majority-minority district, using areas of black population Bordering the area around the University of Cincinnati and northward

HD 32 Create an influence district by joining together the remaining concentrations of black population including some City of Cincinnati and selected suburbs.

HD 33 Moving West along the southern border of Hamilton county including the balance of western Cincinnati and adding Delhi Twp (part) until population level is attained

HD 34 Continuing up the western border of Hamilton county to the Butler County line then east until the population level is achieved at Colerain Township border

HD 35 Beginning with Colerain Twp, continue east around the existing borders of the influence district (HD 32) until the population limit is reached trying not to split political subdivisions. District includes Springdale, Evendale, Reading, and part of Glendale.

HD 36 Continuing east to the eastern border of Hamilton Co then south thru Sharonville, Blue Ash, Montgomery City, Symmes Twp, Amberley Village, Deer Park, Sycamore Twp, Indian Hill, Madeira, Mariemont Village, Fairfax Village, Terrace Park Village, etc to the Anderson Twp line.

HD 37 Complete Hamilton county by adding Anderson Twp, City of Norwood and eastern areas of Cincinnati

MONTGOMERY COUNTY

Display minority population distribution patterns on screen

a) Blacks
b) Hispanics

Draw Minority Districts

There are currently two black state representatives in office, examine the minority areas and attempt to maintain the existing majority-minority district (McLin) and preserve the influence/minority district now held by Tom Roberts

HD 38 Starting with Jefferson Twp in Southwest corner of minority area move north and east until a majority minority district is created.

HD 39 Continue to the north in the city of Dayton and enough to create an influence district with the highest possible minority vote. Take in Madison Twp, Trotwood, portions of Harrison Twp

Draw the remaining non-minority districts

HD 40 Start in northwest corner of county, come east, includes Clay Twp, Perry Twp, part of Madison Twp, Randolph Twp, Butler Twp, Vandalia city and some of Harrison Twp. Add city of Englewood. Take some of Huber Heights, but leave a surplus to attach to Miami County to complete the two Senate districts allotted to Montgomery. [Miami County is currently in SD 5]

HD 41 Moving south along the western border of the county and then east to obtain required population, add in Jackson Twp, New Lebanon city, German Twp, Jefferson Twp (part) Miami Twp, West Carrollton, Moraine and a part of Kettering.

HD 42 Complete balance of county (except for corridor to Miami county noted above) by combining Washington Twp, Centerville city, Oakwood, Kettering (part) and part of Mad River Twp.

HD 43 Remainder portion goes into Miami County (part) and is numbered HD 43.

SUMMIT COUNTY

Display minority population distribution on screen.

a) Blacks
b) Hispanic

HD 44 Currently, Summit County has one black state representative, Vernon Sykes. Try to maximize the minority voters in his district. This includes city of Akron, Wards 2, 3, 5 and parts of 1, 4 and 10.

HD 45 Beginning at the northeastern border of Summit county and going West and South, include the northern townships, Fairlawn, Macedonia, Bath,

Copley and city of Akron, Wards 8 and 4 (part) etc.

HD 46 Beginning south of HD 45, include Hudson Village and Twp, Stow, Silver Lake, Monroe Fall, Cuyahoga Falls, part of Ward 1 in Akron

HD 47 Beginning in Barberton, add parts of the city of Akron, Ward 10 (part) and Wards 6, 7 and 9.

HD 48 Complete balance of Summit County, including Green Twp, Tallmadge, Mogadore, Lakemore, Coventry, Franklin, Springfield, Brimfield, Randolf, Rootstown, Suffield and approximately 30,000 from Portage county

LUCAS COUNTY

HD 49 Currently, one black incumbent State Representative Casey-Jones. Draw minority district first, based upon minority population distribution display.

Start downtown, go west following black population concentration to Ward 6 then back to downtown and then south to add Hispanic voters.

HD 50 Start in East Toledo, then go north to Maumee Bay, then west taking in parts of the city of Toledo and Washington Twp

HD 51 Begin in southwest corner of county and move north and east including suburbs until population limit is reached.

HD 52 Fill in balance of city of Toledo between HD 51 and districts 49 and 50.

HD 53 The remainder portion, city of Oregon, Harborview Village and Jerusalem Twp are given same in HD 53 and will be combined with Ottawa & part of Erie county or counties.

* * * *

[Exhibit 132 (part—page 1) to
Deposition of James R. Tilling (November 25, 1991)]

REPUBLICAN
NATIONAL
COMMITTEE

Benjamin L. Ginsberg
Chief Counsel

Mr. Jim Tilling
Chief Executive Officer
Ohio Senate
State House
Columbus, OH 43266

Dear Jim:

Thanks very much for agreeing to speak on the seminar panels on Friday, February 8, 1991 beginning at 2:15 p.m. in the Colonial Room at the Mayflower Hotel, 1127 Connecticut Avenue, N.W. and again on Saturday beginning at 9:00 a.m. (not 8:30!).

As I mentioned, it would be most helpful if you could appear on the panel discussing what steps should be taken to build the record concerning redistricting in a legislature. Building the record is obviously one of our most crucial tasks over the next few months. There is, as you know, no way to understate the importance of a solid record to successful litigation down the road. Any bills you have introduced, or procedures proposed or policies for making state-funded redistricting tools available would be most relevant. I am particularly interested in the Legislator's approach to the subject. We will also have a lawyer or two on the panel, I hope.

On Saturday, the panel concerns the lawyers role in drafting redistricting plans. As a wiley veteran of this process, please let these guys know how they can help

the most without overstepping their bounds (as if a lawyer would ever do that). There will also be a couple of lawyers on that panel.

As you know, we have invited key Republican legislators and attorneys from all 50 states to this seminar. I have enclosed a draft agenda. We're excited about this seminar and pleased that you'll be joining us.

Thanks again for agreeing to address this group. If you have any questions, please call. We look forward to seeing you on February 8 and 9.

Sincerely,

/s/ Benjamin L. Ginsberg
BENJAMIN L. GINSBERG

Dwight D. Eisenhower Republican Center:
310 First Street, Southeast, Washington, D.C. 20003

DEPOSITION OF FLOYD JOHNSON
(November 27, 1991)
[Docket #73]

[9] MR. GILLIAM: Would you mark that, please, as Johnson Exhibit 1.

(Exhibit marked for identification.)

Q. Can you tell me what this is, sir?

A. That is a set of recommendations to the Ohio Reapportionment Board for minority influence districts and minority districts.

* * * *

[12] Q. Mr. Johnson, was this plan approved by the national NAACP?

A. No.

Q. Was it approved by the general counsel of the NAACP?

A. No.

Q. Was it approved by Mr. Abrams, who is here with you today as the assistant general counsel of the NAACP?

A. No.

Q. Did you submit it to them?

A. No.

* * * *

[20] MR. GILLIAM: The document that Mr. Johnson has produced appears to be a map of precincts in Montgomery County. Would you mark that, please, as Exhibit No. 3.

(Exhibit marked for identification.)

[21] Q. Mr. Jacobson gave you a copy of this map; is that correct?

A. That's correct.

Q. And did you know at the time that he was the chairman of the Republican party here in Dayton, Ohio?

A. I did know.

* * * *

Q. Now, what else did Mr. Jacobson do besides provide you this map?

A. There should be a handwritten comparison—

MR. ABRAMS: Near the bottom of the package.

A. There is a copy of this somewhere.

Q. I have a copy of it.

A. I presented a set of districts for both the districts where Rhine McLin is elected from and Tom Roberts are elected from. And he had a set of districts and I indicated that the district that he had included—this H represents Representative Hickey and during our discussions he indicated that if these districts were—if these two persons were in this district then based upon his assumptions here the vote would turn out 13 to 11, 13,670 to 11,670 representing to me that by moving the district that Representative McLin lives in from extending southward and extending into the eastern [22] part of the city, that she would not be hurt.

* * * *

(Exhibit marked for identification.)

Q. It's handwritten. Now on which part is your part and which part is Mr. Jacobson's parts?

[23] A. My part is represented—this yellow portion here that comes over and takes in Ward 1, this cuts off here and picks up what I call the University of Dayton area and then westward and then southward which still included the cities of Moraine which are currently in the district was my first cut. And then Mr. Jacobson suggested that I take Moraine out and move over and pick up more of the state and ask me did I have any objections to that and then I called a meeting with Rhine McLin and Tom Roberts and discussed the first cut.

MR. GILLIAM: We're referring to a large map which I would ask the court reporter to stop and mark.

(Exhibit marked for identification.)

Q. Referring now to Exhibit 5, Mr. Johnson, as I understand your testimony Mr. Jacobson suggested that Moraine, that you substitute portions of east Dayton which is the area east of the river and east of the Univer-

sity of Dayton area Nos. 33, 26, 27, 25, 20, and 23 for the Moraine area which would be 43, 42, 41, perhaps 43; is that correct sir?

A. That's correct.

Q. And did you ultimately—then you talked to Mr. Roberts and you talked to Rhine McLin?

A. Right.

Q. And did you say that was what Mr. Jacobson had [24] suggested?

A. That's what he suggested.

* * * *

[25] Q. And his recommendation would have resulted with Mr. Hickey being in her district if it had been accepted as he proposed it; is that correct?

A. At that time that we drew the district he didn't know what his address was, but once we agreed that we did not want him in the same district with Rhine McLin then we both agreed that we would take him out of the district that Rhine McLin is represented at this time.

Q. So you had to redraw the district to take him out; is that correct?

A. That's correct.

Q. Now, did Mr. Hickey tell you why he suggested that this area of east Dayton be included in Rhine McLin's district?

MR. DELONE: You mean Mr. Jacobson?

A. Mr. Jacobson.

Q. I'm sorry, strike that. Did Mr. Jacobson tell you why the area of east Dayton should be included in Rhine McLin's district?

A. He said he wanted his Republicans in this other part.

[26] Q. Did he tell you why that would be helpful to him?

A. Well, being a chairman of the Republican party, I didn't have to ask any more questions.

Q. You kind of figured that out.

A. Yeah.

Q. You accepted this portion, that is you Floyd Johnson, accepted this portion of east Dayton as part of your map, is that right?

A. Proposal, that's correct.

Q. And in essence, after taking out Mr. Hickey, went along with Mr. Jacobson in terms of what he wanted at that time, correct?

A. That's correct.

Q. You realized that there were 3 to 2 on the Apportionment Board sitting in Columbus, 3 being Republicans and 2 being Democrats, is that fair?

A. I can count.

• • • •

[27] Q. Are you aware, Mr. Johnson, that all of the elected legislators in the Ohio legislature are Democrats who are minorities?

A. I am aware.

• • • •

[28] Q. Did you look at Mr. Hickey's voting record on minority issues before you agreed with Mr. Jacobson about how the district should be redrawn?

A. I did not.

• • • •

[29] Q. Did you check the voting record of any of the legislators whose districts were redrawn?

A. I did not check their voting records because we were drawing districts for election of legislators.

Q. That's right. Did you check the voting records of any of the legislators?

A. I did not.

• • • •

[30] Q. Mr. Johnson, I'm not sure the record is clear. Let me just repeat the question.

Is it correct that you did not check the voting records of any legislators in connection with redrawing or proposing to redraw districts. Is that a correct statement?

A. That is correct.

Q. And why not?

A. My interests were to draw districts where African American legislators could be elected. That is second generation legislators.

Q. Mr. Johnson, is it possible for white candidates to adequately support black interests and black candidates to support white interests?

A. That's correct.

• • • •

[32] Q. Did Mr. Tilling ever tell you what his proposals were going to be for the districts which would result if the plan you proposed were adopted?

A. He did not.

Q. Did you ever ask him?

A. I presented my plan to him.

[33] Q. I'm asking you a question. Did you ever ask him, Mr. Tilling?

A. No, I never asked him.

Q. Again, why not?

A. It wasn't important to me.

Q. It wasn't important to you?

A. No.

• • • •

Q. Did you know that in Hamilton County as a result of the plans that were adopted by the Republicans [34] and which is in conformity with your plan, that the blacks have two districts which they've been increased and there are six districts in which they are less than 10 percent. Did you know that fact?

A. After the plans were submitted.

• • • •

[35] Q. Then why is this plan for the '90s something that you should decide he should have—strike that.

Why did you decide that for the '90s Representative Mallory should have more blacks in his district?

A. Well, I didn't look at the district as Representative Mallory's district. I looked at it as the legislative district that would give a minority an opportunity to be elected.

Q. Did you evaluate how much white cross-over vote there was for Representative Mallory?

A. Yes.

Q. You did? What did you determine?

A. That he was getting white cross-over vote.

Q. Substantial amount of it, true?

A. Yes. He was being elected after being in the legislature for twelve terms.

Q. And it's your assumption that white cross-over vote would disappear if Representative Mallory was not there?

[36] A. No, my assumption was that incumbency has and name recognition has value.

* * * *

[43] Q. Yes. Did you have a conversation with Mr. Tilling about that?

A. I had conversations with him probably every other day.

Q. During what period of time?

A. From April 12 through the time that the—I actually received the payment.

Q. When was the first payment made to you?

A. I'd have to go back and check my calendar. I didn't bring that information, but it wasn't made prior to the date on this contract.

Q. So you received no money before October 6, is that right?

A. That's correct.

Q. But you did receive money for work that you had done before October 6; is that correct?

A. Yes, that's correct.

* * * *

[46] Q. And Mr. Jacobson—did Mr. Jacobson work with you on any place other than Dayton, Ohio?

A. Yes.

Q. Where did he work with you?

A. He didn't work with me. He made suggestions to see whether or not I would agree to those suggestions on Cuyahoga County.

* * * *

[59] Q. And do you know what regression analysis is?

A. Say again.

Q. Do you know what regression analysis is?

A. No, I do not.

[60] Q. Did you do any racial block voting analysis?

A. Racial block voting analysis?

Q. Yes.

A. In Montgomery County I didn't need to do racial block voting analysis because I've been involved in politics since 1966. So I have collected voting results since 1966.

Q. Had you collected voting results for any place other than Montgomery County?

A. With the exception of the document from Hamilton County, 1990, no.

Q. Did you do any—do you know what the term "racial block voting analysis" means, bivariant regression analysis, statistical formula?

A. It's pretty easy to figure out. Using those terms, I never used that term before.

Q. Did you do such a statistical analysis at any time, Mr. Johnson?

A. No.

* * * *

[68] Q. In connection with your work on the computer where you were actually drawing the maps, did you get any help or any suggestions from Mr. Jacobson? We talked Montgomery County but anyplace else?

A. Nothing that—he had different ideas and would try to influence me on those and I listened to him, but I prepared those districts. On some occasions I had to schedule a time at LSC and then change it so I wouldn't be bothered with it.

Q. You mean he was pursuing you at LSC?

A. Yes.

Q. Trying to?

A. Very ambitious.

Q. Very tenacious, is that what you said, very tenacious?

A. Very, very.

Q. And he made suggestions to you about Hamilton County, is that correct?

A. Not really. He was not familiar with Hamilton County and he couldn't speak, you know, he couldn't make [69] any suggestions. He looked at what I said and he would make statements like I think you could get more in there. That might be the extent of it.

Q. And meaning more black population?

A. Yes.

MR. DELEONE: Are we talking about Jacobson now?

THE WITNESS: Jeff Jacobson.

Q. Did he say words to that effect with respect to Hamilton County districts that you were drawing for example?

A. That's correct.

Q. Franklin County?

A. Yes.

* * * *

[70] Q. And was your purpose to increase the black population in the districts you were drawing generally speaking?

A. That was my purpose.

* * * *

[73] Q. And is that what you thought Mr. Miller was doing was working with you as liaison, is that right?

A. No. He represented to me that the Ohioans for Fair Representation, and these are his exact words, sent me to watch you.

Q. And what did you understand that was all about?

A. Keep up with what I was doing in terms of drawing districts.

Q. Now, did he in fact do that?

[74] A. Yes.

Q. On each district as you drew it?

A. No, just whenever he could catch up with me.

Q. Just whenever he could catch up with you?

A. Right.

Q. So he was observing what you were doing when he could catch up with you.

A. That's correct.

Q. On all the districts that you drew; is that correct?

A. That's correct.

Q. What did you think Ohioans for Fair Representation was?

A. I found out that there was such an organization at the final meeting when we had to submit plans.

Q. Well, you just said Mr. Miller said, "Ohioans for Fair Representation sent me to watch you." Now, did he say that before the plan?

A. He said that before but since that time I found out that there is such a thing as Ohioans for Fair Representation, but I assumed that he was a part of Montgomery County Republican party until at the hearing, as I indicated to the panel, that they asked me had I worked with anybody for Ohio, and no, and Jeff came forward and said, "I am Ohioans for Fair [75] Representation," that's when I found out that there was such an animal.

* * * *

[107] Q. Let me ask you this, did you ever make any attempt to find out if any of the white Democrats were representing minority interests consistently in their vote?

A. I know they do. I know Leo Zimmers does a good job.

Q. Did you look at the House of Representatives to make any determination of that fact.

A. No, I didn't do an analysis on white representatives. My focus was on getting blacks elected.

Q. In retrospect would it have been wise to do that to see what your voting plans would do to those white Representatives?

A. It would have been good to know the [108] information.

* * * *

**[Exhibit 7 to
Deposition of Floyd Johnson (November 27, 1991)]**

[Illegible]

August 21st 1991

James Tillings
Chief Executive Officer
Ohio State Senate
Statehouse
Columbus, Ohio 43266

Dear Mr. Tillings;

Please accept this correspondence as the framework for a mini consulting agreement to provide working capital for me to access the technical information and computerized data available on the terminals in Columbus. My specific objective will be to look at minority dictricts and influence districts for Congressional, Senatorial, and House of Representatives.

I will:

a.) Research and minipulate population data in voting tracts in Cuyahoga,, Franklin and Hamilton Counties for Congressional Redistricting of Ohio's nineteen district delegation to the next Congress. My goal would be to determine how minority voters could maximize their influence and assist in drawing districts within the framework of the Voting Rights Act.

b.) Research on the possibility of State Senate districts and influence districts for Minorities living in Franklin, Montgomery, Hamilton, Lucas and Cuyahoga Counties.

c.) Minipulate lines for new Ohio State Representative districts in those counties where their is significant minority voting population. The total contract amount for this report is $7,800 for a total of 260 hours at a rate of $30.00 per hour.

I will prepare a written report on research work along with an invoice. However, since the clock is already running and recognizing the importance of this project to the minority population of the State of Ohio. I am requesting that should you approve this agreement please foward 25% ($1,950.00) of the contract to cover certain out of pocket expenses such as;

a.) Transportation to and from Columbus, Cincinnati and Toledo

b.) Purchase of large Precinct, Census tract and Ward Maps of these Counties.

c.) Purchase of computer time to plot voter registrations and voter turn out in the targeted districts.

d.) Purchase of miscellaneous disc paper and supplies.

e.) Purchase postage and express mail and telephone tolls for this short term project.

Thank you for the opportunity to work with you on this project.

Sincerely,

/s/ Floyd B. Johnson
FLOYD B. JOHNSON

cc. Jim Daniels, State President NAACP
Jesse Gooding, President Dayton Chapter NAACP
Frank Allison, President Cincinnati Chapter NAACP

DEPOSITION OF STANLEY J. ARONOFF
(November 27, 1991)
[Docket #75]

[5] STANLEY J. ARONOFF

being by me first duly sworn, as hereinafter certifed, deposes and says as follows:

EXAMINATION

By Ms. Sanom:

Q. Will you please state your name and address for the record.

A. Stanley J. Aronoff, 554 Davenport, D-A-V-E-N-P-O-R-T, Apartment 5, Cincinnati, 45204.

Q. And, Mr. Aronoff, what is your current occupation?

A. I'm president of the Ohio Senate and I also am a member of the law firm of Aronoff, Rosen & Stockdale.

Q. Here in Cincinnati?

A. Yes.

Q. How long have you been an attorney?

A. Since 1957.

* * * *

[10] Q. (By Ms. Sanom) Senator, you indicated that you were one of the persons appointed for the 1991 apportionment process; is that correct?

A. Yes.

* * * *

Q. To your understanding what were your duties or responsibilities as a member of that group of five persons?

MR. DELEONE: Same objection. You may answer.

A. The duties were to accept plans that were [11] submitted by any person that desired to submit a plan within certain time frames, to establish rules for the submission of plans, to permit public hearings, to delegate, and ultimately to vote for a plan of apportioning state legislative districts.

Q. You mentioned to delegate. To delegate what?

A. In my instance I delegated almost everything to Jim Tilling, the chief operating officer of the Senate, who traveled the state conducting hearings, doing research, and ultimately being the expert in the line drawing, district drawing process.

• • • •

[15] Q. Thank you. Did anyone on your staff communicate with or give direction to Mr. Tilling at your instruction?

MR. DeLEONE: If you know.

A. No. I gave no instructions to anyone on my staff.

Q. With respect to the Voting Rights Act, did you give any specific direction?

A. No.

• • • •

[16] Q. So with the United States Constitution, Ohio Constitution, Voting Rights Act, the new techniques, you gave no specific direction.

A. That's correct.

• • • •

[29] Q. Prior to hearing Mr. Tilling's presentation did you speak with him or with anyone about the conclusions he had drawn, the lines he had drawn or what his presentation was going to be?

A. No.

• • • •

[35] Q. I'm just going to ask you a series of questions and we should be able to get by them quickly.

Are you aware of whether or not a racial block voting analysis was done in Ohio?

MR. DeLEONE: By whom?

MS. SANOM: By Mr. Tilling or his staff.

A. I don't know one way or the other.

Q. Are you aware of whether or not a correlation of regression analysis was done by Mr. Tilling and his staff in Ohio?

A. I don't know one way or the other.

Q. Are you aware that Mr. Tilling and his staff looked at black voting patterns in areas of high concentration of African American populations?

A. I'm not aware one way or the other. I had nothing to do with the mechanics.

* * * *

DEPOSITION OF ROBERT A. TAFT
(December 9, 1991)
[Docket #110]

[8] Q. Are you aware, sir, that Mr. James Tilling drew the 1991 apportionment plan for the Republican majority of the apportioning persons?

A. It is my understanding that Mr. Tilling was the principal architect of the plan.

• • • •

[16] Q. Was Mr. Tilling to report to anyone on the Apportioning Board?

A. Not to my knowledge.

Q. Okay. Do you know if there was a method for monitoring his progress by anyone on the Apportionment Board?

A. I don't recall any method for monitoring his progress. It was assumed that he would come up with a plan timely to present to the Board by the deadline.

• • • •

[17] Q. What issues were you concerned with?

A. We were concerned with the requirements as I understood them that, under the Voting Rights Act and court cases pursuant to the Voting Rights Act, that where it would be possible to create a district that was a majority minority district, the law and the court interpretations of the law required that the plan create such districts.

• • • •

[18] Q. So one of your primary goals was to create majority minority districts wherever possible in the State of Ohio?

A. I felt that the goal was to comply with the Constitution and Voting Rights Act, and it required creation of districts that would have—where you could assemble a district that was a majority of a minority, and that that was required under the Voting Rights Act.

Q. So wherever that was possible you wanted that to be created. You wanted majority minority districts to be created wherever possible.

A. Yes. I felt that was a requirement of the constitutional plan.

Q. Are you an attorney?

A. Yes.

Q. Where did you receive your law degree?

A. University of Cincinnati.

Q. When was that?

A. In 1976.

Q. Have you studied the law on this issue to make the determination that majority minority districts are to be created wherever possible?

A. I am not a student of the reapportionment [19] process, but it was my understanding that that was the requirement, that was the gist of the court cases pursuant to the Voting Rights Act.

Q. Did you read the cases or did somebody inform you of that?

A. Someone informed me of that.

Q. Who?

A. I think Mr. Tilling, among others, based on his participation in national bodies and national commissions with respect to the reapportionment process.

I also recall reading the Armour case in which I believe there was some discussion of the majority requirement for creating minority districts.

• • • •

[21] Q. Okay. Are you aware of any analysis that was done with respect to racial block voting in the drawing of the 1991 apportionment plan?

A. No.

Q. You never saw any analysis?

A. No.

Q. Never heard any analysis?

A. No.

Q. You never discussed that with Mr. Tilling?

A. I did not.

Q. Senator Aronoff or Governor Voinovich?

A. I did not, not that I recall.

Q. Do you know if that is necessary under the Voting Rights Act in creation of majority minority districts?

A. I don't—I can't say if it is necessary. Certainly it was—I think in some of the hearings it came up as to what it required, what was required to elect a minority candidate in a particular district. I know there was testimony with respect to that. So from [22] that standpoint I assumed it may be a pertinent factor, but I can't tell you for sure.

Q. And what testimony are you referring to generally?

A. I think there may have been some testimony on the part of—I can't recall who, but perhaps some incumbents with respect to the percentage, composition of a district in terms of what percentage minority it was and whether it had the capacity or the practice of electing a minority candidate.

Q. And were you aware from those hearings that there were at least seven representatives of color who had been elected with less than a majority of minorities in their district?

A. I was aware there were some. I didn't know the number.

Q. Do you know whether or not that was factored into the analysis in creation of majority minority districts for Ohio, for the 1991 plan?

A. I can't say for sure.

• • • •

[25] Q. Okay. And Mr. Tilling was to in his own analysis make those determinations and—

A. That's right, yes, since he was something of an authority on reapportionment, knowledgeable about it.

• • • •

Exhibit 6 to
Deposition of Louis W. Blessing, Jr. (December 10, 1991)]
[Docket #106]

[SEAL]

DEPARTMENT OF JUSTICE

REMARKS OF

JOHN R. DUNNE
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE
NATIONAL CONFERENCE OF STATE LEGISLATORS
CONCERNING

"REAPPORTIONMENT"

ON
AUGUST 13, 1991
ORLANDO, FLORIDA

It's a distinct pleasure to address this conference on reapportionment—a topic which has special meaning to me both in my present position and as a former State Legislator who served a good long time in the New York State Senate. I remember well, having to endure with anxiety what seemed like an interminable wait while the practitioners of the Arcane Science—electoral redistricting—performed their mystical handiwork and determined my political survival. The outcome, as you well know, could, and did, cost a fair share of officeholders their jobs. I was first elected during a special election held to implement a redistricting plan required by the Supreme Court's "one-man-one-vote" ruling. Later, I watched—often quite nervously—as my district was repeatedly redrawn to reflect the results of both the 1970 and the 1980 Censuses. Thus, although I now play a very different role, I have not forgotten what it's like to be in your shoes as you prepare for the Legislative and Congressional redistrictings that lie ahead—a task which, due to legal and technological developments, is perhaps the most difficult and controversial that it has ever been. To help you in that process—and keep in mind, I am from Washington and I'm here to help you—I want to talk about the Civil Rights Division and our role in enforcing the Voting Rights Act.

The Voting Rights Act, was enacted over 25 years ago in response to a long and sorry history of oppression of racial minorities, was passed for one very special purpose: to eliminate the cornerstone of that system of oppression by outlawing all racially discriminatory voting rules, so that minorities in this nation would be able to attain their fair share of political power and thereby gain the ability not only to protect themselves from other forms of oppression but to advance their interests through the political process, as well.

There are two sections of the Voting Rights Act which have a direct impact on the redistricting process and, by

their combined effect, require compliance by every state in the union:

First, under section 5—the preclearance section—redistricting plans from certain specific states [1] or local jurisdictions [2] must be reviewed—either by a three-judge federal district court in Washington or by the Department of Justice—to determine whether the state has proven, as it must, that the plan satisfies the mandate of the Voting Rights Act, namely, that it be free of racially discriminatory purpose and effect. Following the 1980 census, we interposed section 5 objections to and refused to preclear 24 statewide congressional and legislative redistrictings. Most of the objections involved the dilution of minority voting strength through either the fragmentation or the packing of a politically cohesive and geographically concentrated racial or language minority, coupled with the state's failure to prove that the dilution was not motivated, at least in part, by a racially discriminatory purpose. In not one instance has the three-judge court reversed a preclearance objection issued by the Justice Department. Thus, experience has clearly established that covered jurisdictions must satisfy the civil rights division that their redistricting plans comply with the statutory and constitutional requirements for facial fairness *before* they can put them into effect. As a result, section 5 has proven to be a potent weapon in fighting racially discriminatory reapportionment plans.

I should also tell you that if a jurisdiction were to commence a declaratory judgment action before a three-judge

---

[1] Covered states are Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. In addition, New Mexico is covered by the preclearance requirement of Section 3(c) as a result of litigation successfully challenging its post-1980 legislative redistricting plan.

[2] Certain counties in the following states are covered: California, Florida, Michigan, New Hampshire, New York, North Carolina and South Dakota.

federal district court in Washington, D.C. in order to secure pre-clearance, rather than following the conventional, quicker, and less formal procedure of administrative pre-clearance, we would treat the action as we would any adversarial proceeding. We would be prepared to engage in extensive discovery, including interrogatories, requests for production of documents and depositions. We would force the state to meet its burden of proof at trial, subject its witnesses to extensive cross-examination, put on our own witnesses and experts and, in short, litigate the case to the fullest extent necessary to make certain that the submitting jurisdiction met its burden under the law.

With those basic principles in mind for section 5 pre-clearance, let us look at section 2 of the Voting Rights Act which requires that all redistricting plans across the country—not merely in those that are subject to section 5—provide minority citizens with equal opportunity to participate in the political process and the opportunity to elect representatives of their choice. As congress made clear in the 1982 amendments to the Voting Rights Act, and as the Supreme Court reiterated in 1986 in *Thornburgh* v. *Gingles* when it first construed those amendments, this means that proof of intentional discrimination is not required to vitiate a plan—a redistricting plan violates the Voting Rights Act if it simply has a discriminatory result. Thus, the relevant legal standard today is whether the redistricting plan results in discrimination, even if those who drew and approved the lines had no discriminatory intent and thought they were creating districts that were fair to all minorities. Either infirmity, discriminatory purpose *or* discriminatory result, is sufficient to condemn a plan. Clearly, then, the difficulty of the redistricting task is immense and we in the civil rights division stand ready to help you in any way we can in this effort.

Let me turn first to some practical considerations in the administration of the Voting Rights Act. Our best estimate is that the department will receive over 1,000 submissions of redistricting plans before the end of this year, with an even greater number in the years that follow. At the same time, we plan to exercise our authority under section 2 and examine plans adopted in states that are not subject to section 5 review. Although redistricting in response to a decennial census is hardly new, the process, this time around, is unlike any other we have seen, due to all of the legal, social and technological advances that have occurred during the past decade. In preparation for reviewing these plans, we have acquired the most up to date, state of the art computer hardware and software. Thus, we are prepared to handle what could be an avalanche of complex proposals. In addition, we have a seasoned team of voting rights experts, led by two veterans each with 30 years experience, who have been through two rounds of decennial redistrictings. Thus, we have the troops and the equipment to take on what might be dubbed: "redistricting storm"!

Let me just note a few of the changes that will affect virtually every reapportionment plan in the nation.

First: In most parts of the country, the question is no longer whether the voices of racial and language minorities will be heard in the redistricting process. They will. As a result of the progress that has been made since the passage of the Voting Rights Act, black, hispanic an other minority legislators have taken their rightful place firmly in the legislative halls that will fashion the political boundaries for the 1990's. Consider that in 1970, only 1,469 blacks held elective office. By January of 1990 there were five times that number of black elected officials in this country. We have already seen from early submissions that the input of minority legislators and their constituents affected redistricting proposals

and alternatives as they were developed and examined and debated.

Second: Due to the wonders of computer technology, legislators, as well as those ouside the legislative process, will have a much wider selection of alternative districting plans than in the past. These alternative plans will be susceptible to faster and more specific political analysis, not only by legislative players, but also by those players on the outside trying to influence the process. Everyone involved will have access to more knowledge about the political and racial implications of every redistricting option. And the states must be prepared to explain and defend their plans in light of that heightened scrutiny. That means justifying their rejection of certain alternatives as well as the adoption of a specific plan. Every group or any concerned citizen with a home computer and basic software will be able to draw its own alternative plan. Moreover, all will have access to sophisticated programs and illustrative graphics ready to reveal the political and minority impact of every permutation that you do—or do not—consider. Move a district line one block north or one block south and I assure you that someone will have a color chart and tables of statistics to show the impact. And you'll see similar presentations analyzing the failure to move that same district line one block North or South.

Third: The substantive standards for enforcing section 5 clearance of the voting rights act have become clearer. We have gone through two sets of decennial redistrictings under the Act and have received guidance from the courts on how the 1982 amendments to section 2 apply to redistricting plans. The Supreme Court's landmark decision in *Thornburg* v. *Gingles* provides exhaustive guidance on interpreting the Voting Rights Act. And in 1987, the department issued guidelines under section 5 detailing the substantive standards we apply.

Basically, these guidelines set forth three inquiries that we pursue in our section 5 analysis. First, we ask whether the jurisdiction has met its burden to prove that the plan does not have a retrogressive effect, that is, that the plan does not reduce minority voting strength from the level that minorities enjoyed under the prior plan. As a practical matter, we see few if any plans that are retrogressive.

Second, we ask whether the jurisdiction has proven that the plan was not motivated, in whole or in part, by a racially discriminatory purpose. Because the concept of discriminatory purpose is so central to our work, let me pause here for a minute and explain what I mean. A discriminatory purpose means a design or desire to restrict a minority group's voting strength, that is, the ability of that group to elect candidates of its choice, below the level which that minority group might otherwise have enjoyed. Discriminatory purpose does not mean racial animus. As Judge Kozinski of the Ninth Circuit noted in the *Garza* case, legislators who harbor no ill will at all toward minorities would nevertheless be engaging in purposeful discrimination if they fragmented a minority community in order to protect incumbents who might be voted out of office if the minority voters were able to elect the candidates of their choice.

On the other hand, discriminatory purpose does not mean the intentional adoption of a plan that gives a minority group control of less than a proportional or maximum number of districts. A minority group is not automatically entitled to a proportional redistricting plan. Disparate effects alone, even when they are totally foreseen, do not equal discriminatory purpose under section 5, although they may be a problem under section 2.

Disparate effects, however, do need to be explained in a section 5 submission so that we can be sure that the state has satisfied its burden of proving the absence of

racially discriminatory purpose. If, for example, a minority group's proposed plan is rejected, we must be satisfied that the jurisdiction made its decision for a valid, non-racial reason and that the plan was not rejected because it was favorable for the minority group.

Third, we ask whether the jurisdiction's plan clearly violates section 2 of the act under the standards set forth by congress and the courts.

Without attempting to be exhaustive, let me just outline for you some of the redistricting practices we look for in deciding whether there may be a violation of the Voting Rights Act:

1. Packing a racial or ethnic minority group into only one district where that minority might have been able to elect candidates in two or three less concentrated districts.
2. The obverse side of that issue: fragmenting or splitting a geographically compact minority group into 2 or more districts where they will constitute an electoral minority.
3. Reducing the percent of minorities in a district where the minority voters have previously been able to elect candidates of their choice by only a very slim margin.
4. Maintaining the re-election chances of those in control of the redistricting process by preserving the old district lines to the greatest extent possible at the expense of minority voters.
5. Altering district boundaries to shore up, for the majority group, previously marginal or competitive districts where minority voters were almost, but not quite, able to elect a preferred candidate.
6. In open districts, where there is no incumbent, drawing the boundaries of the district so that the

minority group is at a distinct disadvantage in electing its preferred candidate.

7. Inexplicably deviating from the redistricting criteria that the state claims it used in drawing the boundary lines.

8. Excluding minority groups from the process of drawing the plan, or merely paying "lip service" to them by soliciting, but then ignoring, the minority group's input and then providing no rationale for rejecting the minority group's redistricting proposal and, finally,

9. The unexplained or arbitrary use of multimember districts.

This is neither a hard-and-fast list nor an exhaustive one. I offer it merely as a helpful guide in evaluating redistricting plans. Many plans that suffer from one or more of those indicators may be accepted; but the presence of too many should lead you to re-examine the impact that a proposed plan may have. It is my hope that the states will insist that any plan submitted to them for consideration complies with the Voting Rights Act.

Let me describe some recent decisions that we have made under section 5 which illustrate how we apply the principles I have just outlined.

In Louisiana, the proposed maps for the state house and senate fragmented black population concentrations in two areas in the senate and seven in the house, despite proposals by the minority community that would have kept those concentrations intact and created viable minority districts. We interposed an objection because our analysis revealed that, on balance, the evidence as to each of these areas suggested that the legislature's decisions had been motivated by a desire to protect incumbents at the expense of minority representation. Ob-

viously, protecting incumbents is not illegal in and of itself, but the law is clear that it is not a valid reason for rejecting feasible alternatives that would give minority voters an opportunity to elect candidates of their choice. Again, as Judge Kozinski noted in the *Garza* case, "where, as here, the record shows that racial or ethnic communities were split to assure a safe seat for an incumbent, there is a strong inference—indeed a presumption—that this was the result of intentional discrimination . . . ." [3]

But these calls can be close ones. In another area of the Senate plan in Louisiana we did not object to the state's rejection of a proposed minority district in Jefferson Parish. It appeared that, among other things, the proposed district would have had an odd, somewhat tortured shape: its creation would have divided the community of Algiers among three districts, even though Algiers had traditionally been maintained in a single district and the people of Algiers wanted it to remain that way. It would not be appropriate to say the legislature in that instance acted with an invidious racial purpose.

Last Sunday evening, the Louisiana Legislature passed and Governor Roemer signed new plans for each House and we are currently reviewing them with an eye toward the legislative election scheduled for this October.

In Mississippi, we objected to the plans for the State House and Senate because the evidence indicated that the legislature had deliberately fragmented black population concentrations in order to dilute minority voting strength. In reaching this conclusion, we relied in part on the fact that compact and contiguous minority districts could easily have been created but were not and the legislature had no plausible, nonracial explanation for its actions. We

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[3] *Garza v. County Of Los Angeles*, 918 F.2d 763, 779 (9th Cir. 1990) (Opinion of Kozinski J. concurring in part and dissenting in part).

also relied on evidence that support for the submitted plans and opposition to the principal alternative plans often were characterized by overt racial appeals.

In several instances, the state argued that its plan did in fact create viable minority districts where blacks comprised 60% or more of the voting age population. But raw numbers alone can be misleading. We looked, as we always do, behind the numbers to the underlying facts. We uncovered evidence that blacks in those districts would not be a majority of the likely voters. In one district, for example, a critical number of blacks were inmates in a state prison who, of course, cannot vote. In another, they were college students who would not be in the area at the time of the August primary. In others, critical numbers of blacks had low turnout rates because they lived in isolated rural areas, far from the polls and without cars or access to public transportation.

After our objection, the Mississippi Legislature failed to agree on a new plan and a three-judge court was convened to fashion a map. That court, which is still working on a districting plan, recently decided to hold elections in 1991 under the districting lines and to hold special elections under a new map in 1992.

In Virginia, the state plan created eleven minority House districts. Alternatives proposed by the NAACP, the Republican Party and the ACLU would have provided for thirteen minority districts. The state's main justification for refusing to create the two additional districts was that the state plan had been drafted by the legislative black caucus. We were not convinced, however, that the decision to reject the two additional minority districts originated entirely with the black caucus or that their endorsement of the state plan negated the possibility of a deliberate design to protect incumbents at the expense of minority representation.

The state also argued that it had refused to create a proposed minority district in the Richmond area because

the creation of that district would have endangered a minority incumbent in Richmond. But our analysis indicated that the minority incumbent would still have been in a viable minority district under the alternative plan—albeit not one as much to her liking. Under those circumstances, we concluded that protection of the incumbent minority legislator was not a valid reason for rejecting an alternative that would have given minority voters outside of her district an opportunity to elect candidates of their choice.

Along the southern border of Virginia the circumstances were different and, although it was a close question, we concluded that the state did have valid reasons for not creating yet another proposed minority Senate district in the Danville area. Among other things, the district lines under the alternative plan for that area would have fractured two independent cities.

I should add that our objection in Virginia was very narrowly focused. The state was able to remedy the problem quickly and without disrupting other parts of its plan. We gave the state's revised submission priority attention and, I am happy to say, we were able to preclear it within 24 hours of its submission.

In New York City, the situation was not simply black and white. Rather, due to large numbers of Asians and Hispanics, the situation was black, brown, yellow and white, which immeasurably complicated our task and the task of the New York City Districting Commission. We found that blacks and Asians had been treated fairly but that Hispanic voting strength had been diluted, apparently as the result of an effort to augment black voting strength.

The proposed map for the New York City Council created only six viable Hispanic districts out of a total of 51, even though Hispanics constituted approximately one quarter of the city's population—but only 15% of the

registered voters. There were two other districts in which Hispanics constituted a majority of the voting age population but only a slim plurality of the registered voters. Our analysis indicated that there was a significant risk that Hispanics would not be able to elect candidates of their choice in those districts because of a number of factors, including their lower turnout rate.

These concerns had been brought to the attention of the Districting Commission by members of the Hispanic community but the Districting Commission had rejected proposals to add Hispanic voters to those districts. Our task was to decide whether the Commission had been motivated, in whole or in part, by a discriminatory purpose or whether the Commission had acted for a valid, non-racial reason. The Commission argued that it had a valid reason, namely to avoid weakening Hispanic majorities in adjacent areas. Our analysis, however, revealed that changes could be made that would not endanger the adjacent Hispanic districts. There was also evidence that Hispanics had not been treated as fairly as other groups in the districting process and that the Commission appeared to be making choices throughout its plan, including areas of the city not covered by section 5, that consistently disfavored Hispanics. Based on the totality of of the circumstances, we concluded that the Commission did not have valid reasons for rejecting the proposals to strengthen the marginal Hispanic districts and giving the Hispanic voters in those districts a real opportunity to elect candidates of their choice. Accordingly, we interposed an objection.

Again, I would like to note that our objections in New York were very narrowly focused and easily remedied. Within a week the Commission was able to agree upon changes that met our objections without significantly disrupting the remainder of the plan. As was the case with Virgina, we gave the revised submission priority atten-

tion and we were able to preclear on the same day it was submitted.

Let me hasten to add that these examples are given not to highlight the racial discrimination in Louisiana, or in Virginia, or in Mississippi, or in New York City. Rather, I offer these examples merely to help guide you as your wrestle with various aspects of the very difficult process of redistricting in your own state.

In closing, let me say that we understand the problems that you face in attempting to devise and enact new districting plans. Census data may be late and not as complete or accurate as we all would like. Tight time frames will govern the redistricting process. Various interest groups and commentators will be pulling you in different directions at once. But I believe that together we can ensure that the coming round of redistricting efforts will produce plans that provide the full measure of fairness to racial and language minorities required by the Voting Rights Act and the Constitution.

As President Johnson said when the Act was passed twenty-six years ago, discrimination in voting is a wrong which no American, in his heart, can justify. The right to vote is one which no American, true to our principles, can deny.

Let us all work hard—and together—to achieve that cherished goal. I think we can do it.

DEPOSITION OF DAVID HORN
(December 10, 1991)
[Docket #113]

[11] Q. This is a Xerox copy of a document which was produced in discovery in this case, Mr. Horn. Can you identify it as a document that you wrote?

A. Definitely. I wrote that document, I would say probably early September.

Q. Of 1991?

A. Correct.

Q. How did you come to write this document?

[12] A. I would say the primary motive was curiosity. I had earlier done a similar exercise for a seminar that the Center held in November 16, 1990, here in Columbus, which I hope you have a copy of the seminar document. It is over, what, 52 pages in length.

Q. I think I do.

A. And it contained, a central part of that document contains, a central part of this seminar document contains an exercise called "Hypothetical Republican Gerrymander." Actually the descriptive page is entitled "Let's Pretend." And in that exercise I, using 1980 data, I pretended that I was a consultant hired by the Republican Party of Ohio under a situation in which they rather than the Democrats had controlled the Apportionment Board, and tried to find out just how much I could hurt Democrats by drawing a plan that would still meet the enforceable requirements of Article XI of the Ohio Constitution.

And so you can examine that document at your leisure. But it then gives you the background to the document you are now asking about, "Republican Opportunities." It is simply a partial plan based on 1990 data because, having determined just how possible it is to hurt the out party under the 1980 situation, one naturally asks, well, what would Republicans do this [13] year now that they are in control of the board.

Now I should emphasize that this is only a, quote, partial plan. the reason being that first my time is limited and the data that you need to draw plans in the major urban counties was simply not in any realistic manner available to the general public, of which I guess I am part.

So that plan covers just the rural parts of the state. And it was done in probably two days' time. And the principal data source I was able to get, and this is a document produced by the Ohio Data Users Center, which gives you the populations of all the counties, townships, municipal corporations. But it doesn't give you the populations of the innercities, which is what you need to know the census tracts and more detailed information.

So that's why what you see there, what does it say, for instance Hamilton County, "Pack as many Democrats as possible into the black majority innercity HDs." I don't actually do that, I am just, you know, sort of saying this would be the plan, just as was actually done with real data in the earlier exercise called "Hypothetical Republican Gerrymandering."

* * * *

[37] Q. And this section called "Let's Pretend" was based on actual population data; is that correct?

A. This is real plans using real demographical data, yes.

Q. And it formed the basis for at least some of your thinking on the document entitled "Republican Opportunities."

A. I earlier said just exactly that to you, yes.

Q. Now I note that the strategy is the same with [38] respect to Franklin County and Hamilton County, in "Let's Pretend" and in "Republican Opportunities." Is that correct, sir?

A. Correct.

Q. You observe that in "Republican Opportunities" the same sentence appears, "Pack as many Demos as

possible into two black innercity HDs, both for Hamilton and Franklin, also for Montgomery County," correct?

A. Correct.

* * * *

[48] Q. You will note that in your plan you state "Pack as many Demos as possible into two black majority innercity HDs," correct?

A. Correct.

* * * *

[51] Q. (By Mr. Gilliam) Let me ask you a question again about "Let's Pretend," the same document that I believe you have got here.

With respect to Hamilton County, again the "Let's Pretend" document identified Republican strategy, "To pack the Democratic majority, as much of the Democratic majority minority"—

A. Minority.

Q. —"into two heavily Democratic districts, HD 23 and 25, with black majorities," correct?

A. Correct. Common sense, any Republican consultant would want to do that.

MR. COLLIER: Object, move to strike.

Q. The next statement is, "Then fragment the remaining Democrats into six Republican dominated districts," correct?

[52] A. Correct.

Q. And when you look at Republican gerrymander for Hamilton County for 23 we see a number of 53.4 for black population, correct?

A. Correct.

MR. COLLIER: Object, leading.

Q. And for 25 the number is 50.1; is that right, sir?

MR. COLLIER: Object, leading.

A. That is my calculation based on the documents we prepared for the seminar a year ago.

* * * *

Q. And did you consider that those two figures were representative of packing in Hamilton County?

MR. COLLIER: Objection.

A. Definitely yes.

Q. And you say that with great conviction. Why is that, sir?

A. Because I labored mightily to see how much I could do, I spent several hours, if you look at the [53] seminar document and you look at the configurations of the districts you know somebody could not do that in 15 minutes. It takes effort, and I made the best effort I could.

* * * *

[54] Q. Now with respect to Montgomery County, in the "Republican Opportunities" document you state, "Pack as many Demos as possible into two black minority innercity HDs having incumbents Roberts and McLin." Is that right, sir?

A. That's correct.

Q. You then suggest, "Break up Hickey's district, pairing with him with wither Guerra or Corbin in heavily Republican HD. Create new open HD in southern and eastern townships"—

A. I think it is western.

Q. —"western townships," thank you. Equal opportunity equals 1."

Now with respect to Montgomery County, the number that you put into "Let's Pretend" for Republican gerrymandering was HD 36, 33.1 and HD 37, 46.5; is that correct, sir?

A. That's right.

Q. Is that as heavy a packing of Democrats into districts as you could do?

A. It was the best I could do using the 1980 data.

* * * *

[98] Q. Minority majority district, a district over 50 percent?

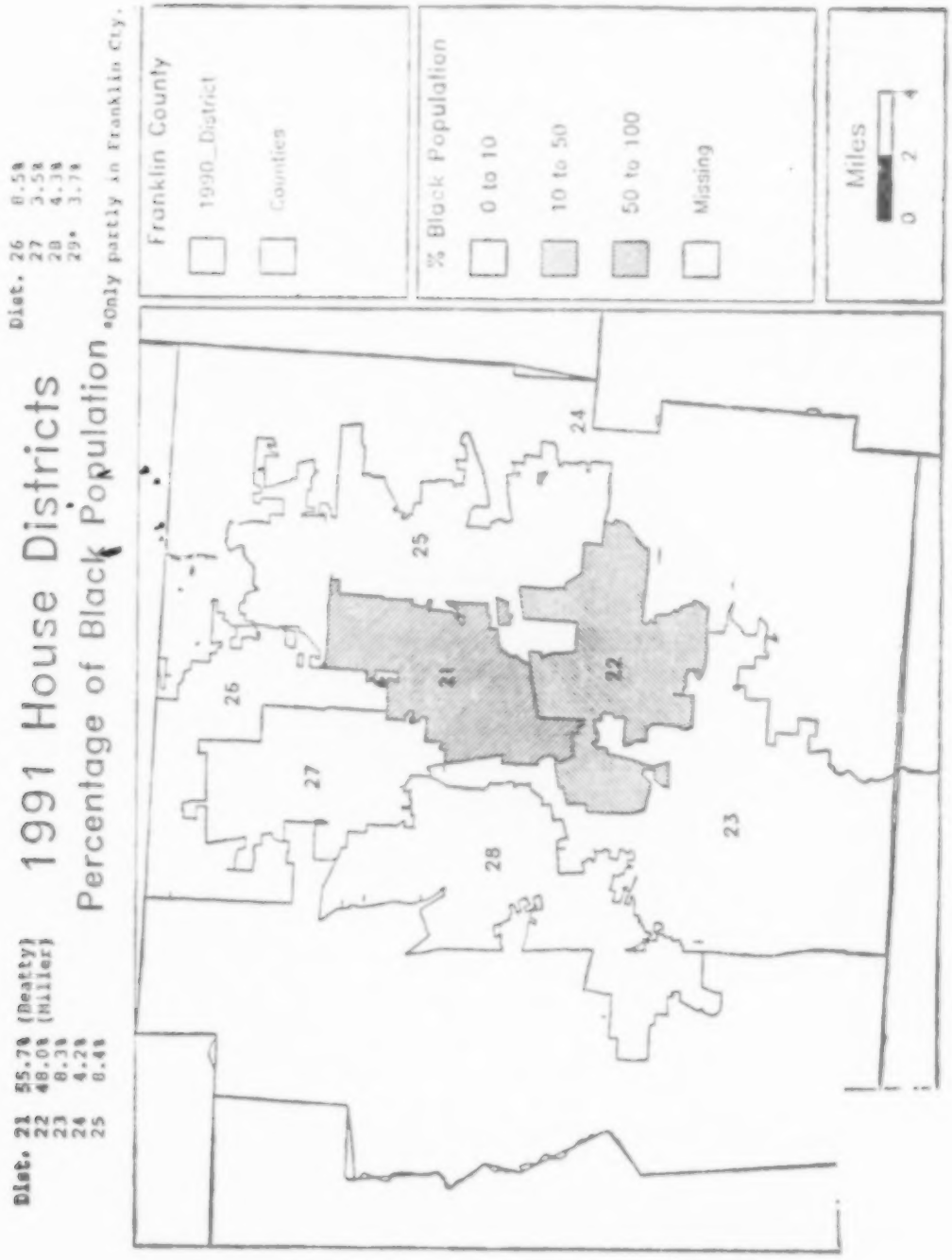
A. I would say 40 percent or 45 percent. And, of course, you don't have to have a majority of African-

Americans in Ohio to elect an African-American to the legislature. I think my researches show that any—there is only one district in the last 20 years that had less than, had more than—how do I put it—more than 35 percent African-American population that [99] did not elect an African-American. And that was Senate District 25 in Cleveland, which elected Lee Fisher.

But aside from that, 35 percent African-American is probably—well, Ray Miller himself made that statement years ago at one of our informal seminars. 35 percent is considered adequate to elect a black person in Ohio because you don't have the history of racial polarization in our voting.

* * * *

**[Exhibit 5 to
Deposition of David Horn (December 10, 1991)]**



FRANKLIN COUNTY SUMMARY

1. The Majority Plan increases black population beyond the previous highest levels in two districts. District 21 is now 55.7%; District 2 is now 48.0%. The previous highest levels were 46.8% in District 31 and 38.5% in District 29.

2. The Majority Plan increases the Democratic index concentration beyond the previous highest levels. District 21 is now 76.50; District 22 is now 69.35. The highest previous levels were 66.33 in District 31 and 62.97 in District 29.

3. There are now *seven* districts with less than 10% black population. Under the previous boundaries there were *four* such districts.

4. Minority Representative Ray Miller has been elected for six consecutive terms. His black population was increased from 38.5% to 48.0%; his Democratic concentration was increased from 62.97 to 69.35.

5. Minority Representative Otto Beatty has been elected for seven consecutive terms. His black population has been increased from 46.8% to 55.7%; his Democratic index has been increased from 66.33 to 76.50.

6. The net changes in political strength are as follows:

1981	1991
3 Strong D's (29, 31, 32)	2 Strong D's (21, 22)
1 Moderate D (30)	1 Marginal D (23)
4 Moderate R's (28, 33, 34, 35)	2 Moderate R's (25, 27)
	4 Strong R's (24, 26, 28, 29)
4 D's; 4 R's	3 D's; 6 R's

FRANKLIN COUNTY

1981 DISTRICTS				1991 DISTRICTS [1]			
Minority Rep.	District No.	% Black Pop.	VI	Minority Rep.	District No.	Pop. % Black	VI
	28	5.9	45.41(MR)	O. Beatty	21	55.7	76.50(SD)
R. Miller (elected for 6 terms)	29	38.5	62.97(SD)	R. Miller	22	48.0	69.35(SD)
	30	12.4	55.14(MD)		23	8.3	51.92(XD)
O. Beatty (elected for 7 terms)	31	46.8	66.33(SD)		24	4.2	39.77(SR)
	32	26.6	58.02(SD)		25	8.4	43.50(MR)
	33	4.1	44.49(MR)		26	8.5	40.56(SR)
	34	5.1	39.00(SR)		27	3.5	43.90(MR)
	35	1.4	34.27(SR)		28	4.3	39.95(SR)
					29*	3.7	38.04(SR)
			4 D's 4 R's				3 D's 6 R's

[1] Closest Correspondence of Districts 29 and 31
29-21
31-22

* Only partly in Franklin County

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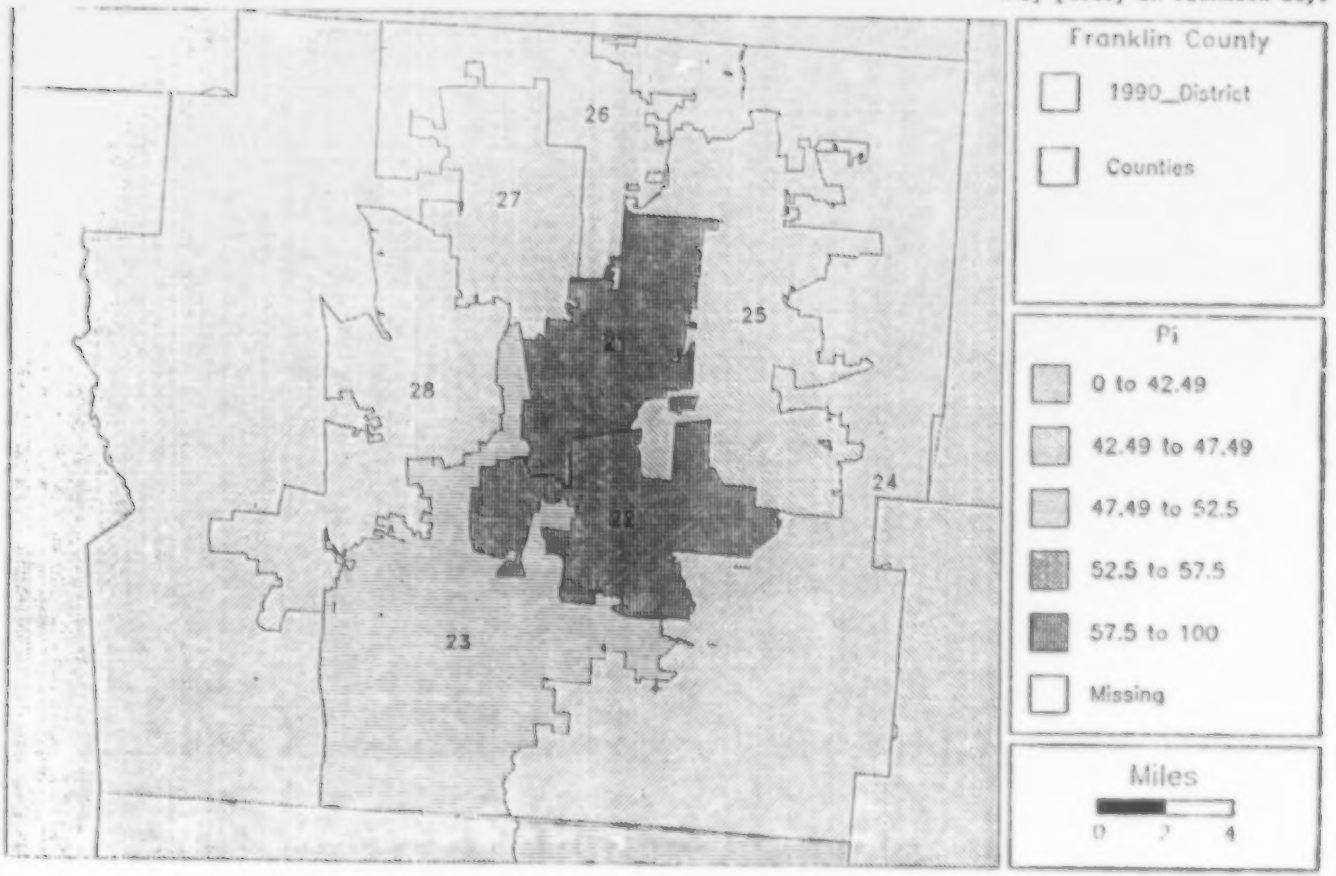
Dist. 21 76.50 (SD)
22 69.35 (SD)
23 51.92 (HD)
24 39.77 (SR)
25 41.50 (HR)

1991 House Districts
Voting Index

Dist. 26 40.56 (SR)
27 43.90 (HR)
28 39.95 (SR)
29* 38.04 (SR)

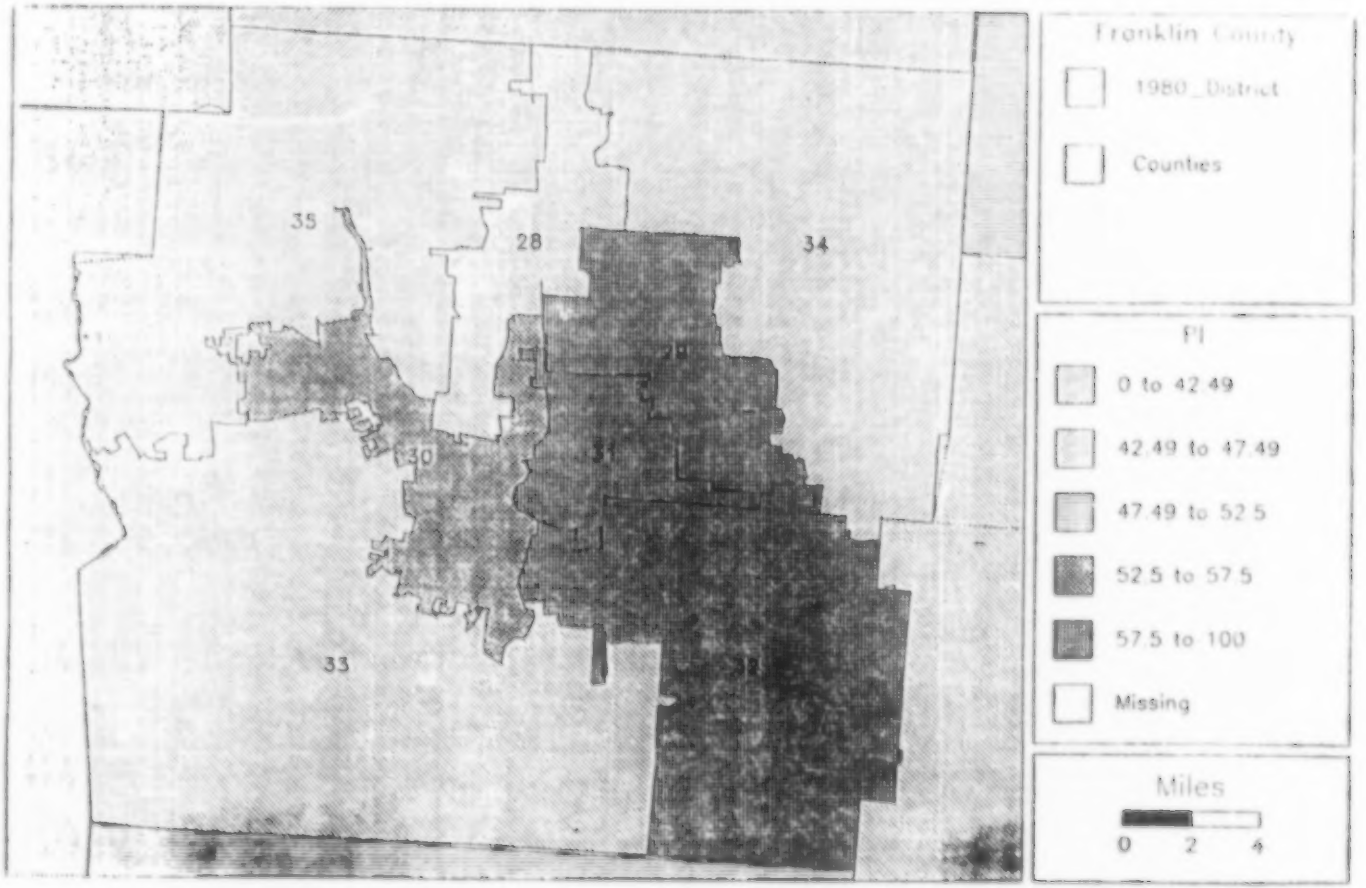
*Only partly in Franklin Cty.



1981 House Districts
Voting Index

Dist. 28 45.41 (MR)
29 62.97 (SD)
30 55.14 (MD)
31 66.33 (SD)

Dist. 32 58.02 (SD)
33 44.49 (MR)
34 39.00 (SR)
35 14.27 (SR)



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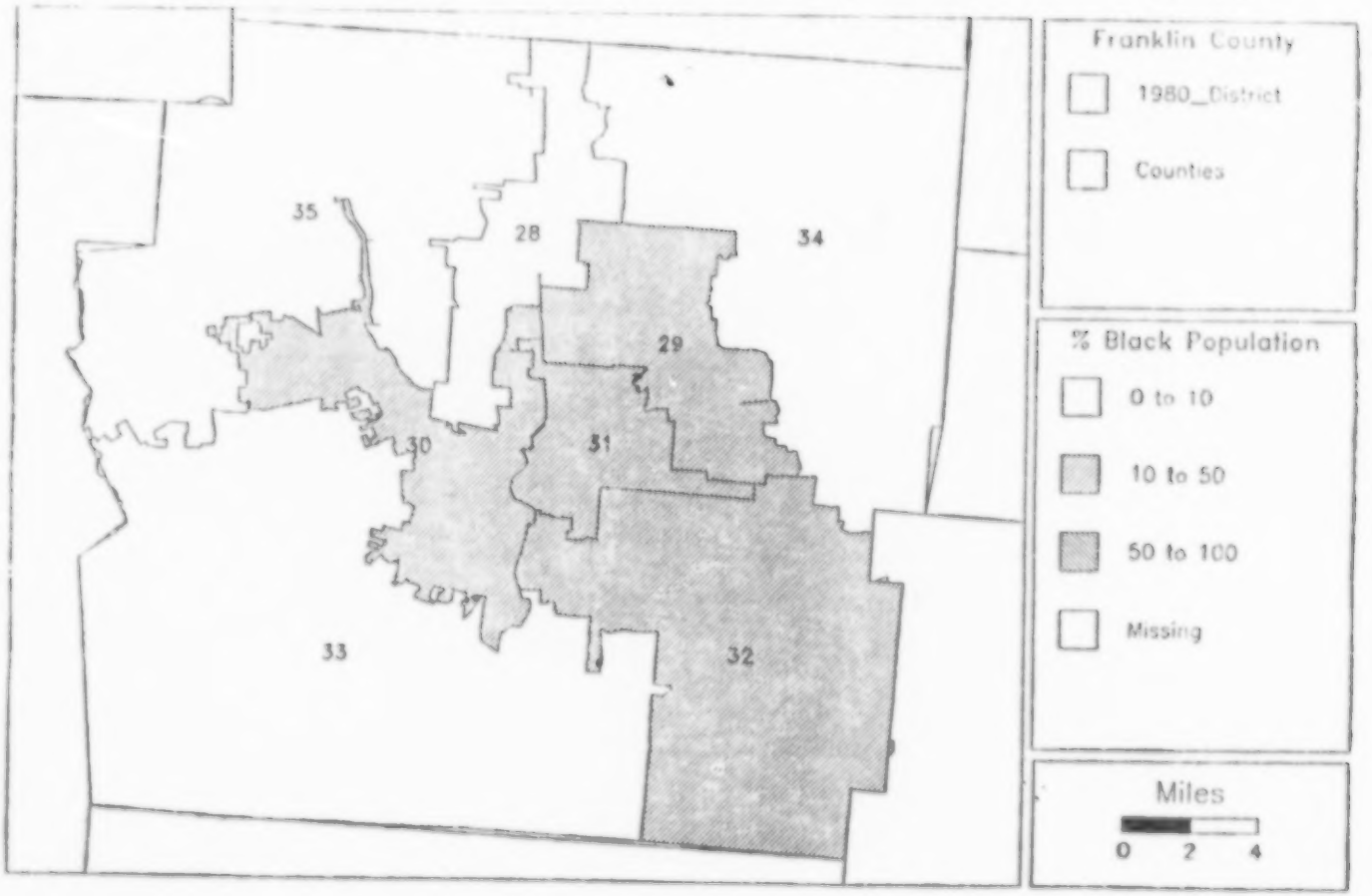
1981 House Districts
Percentage of Black Population

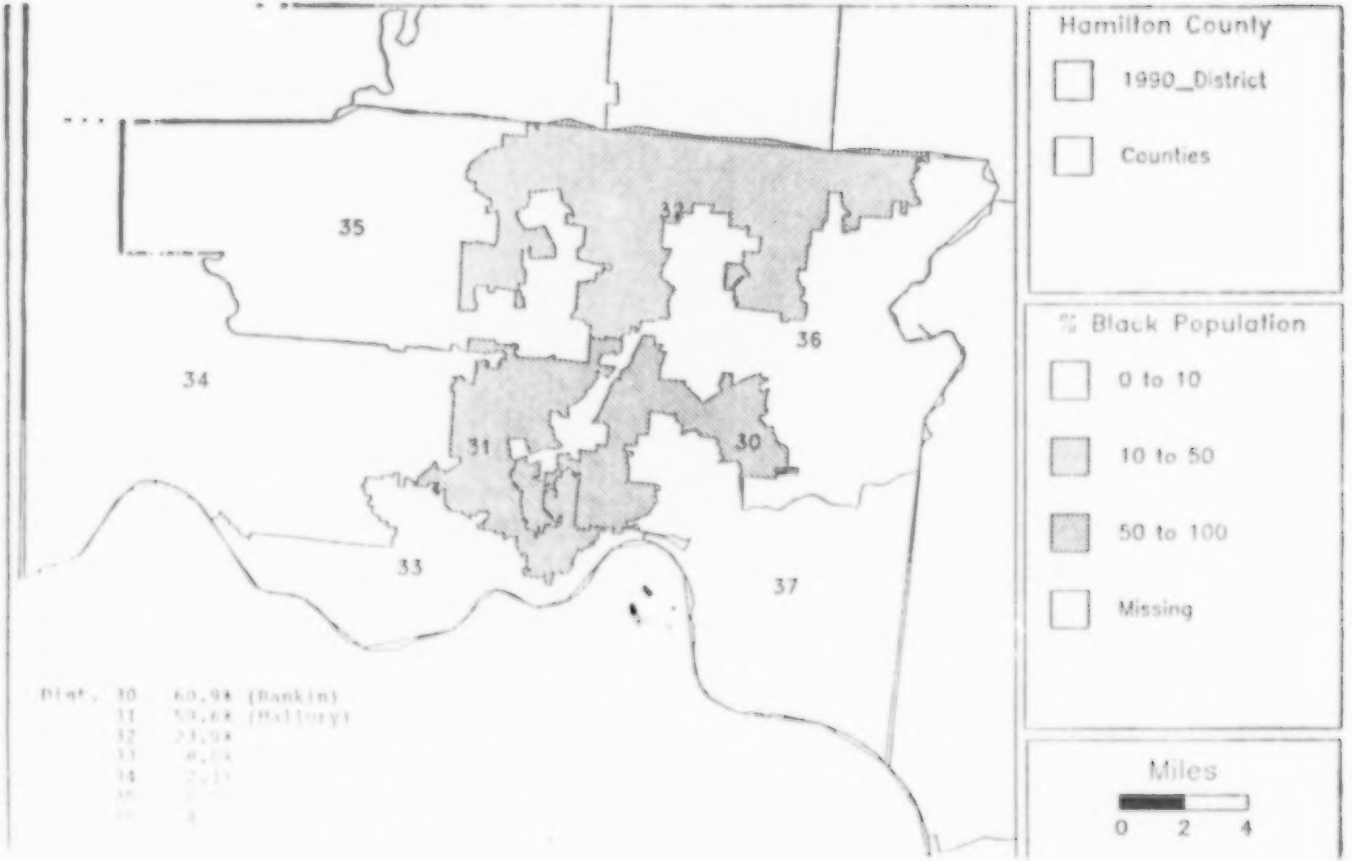
Dist. 28 5.9%
29 38.5% (Miller)
30 12.8%
31 46.8% (Beatty)

Dist. 32 26.6%
33 4.1%
34 5.1%
35 1.4%

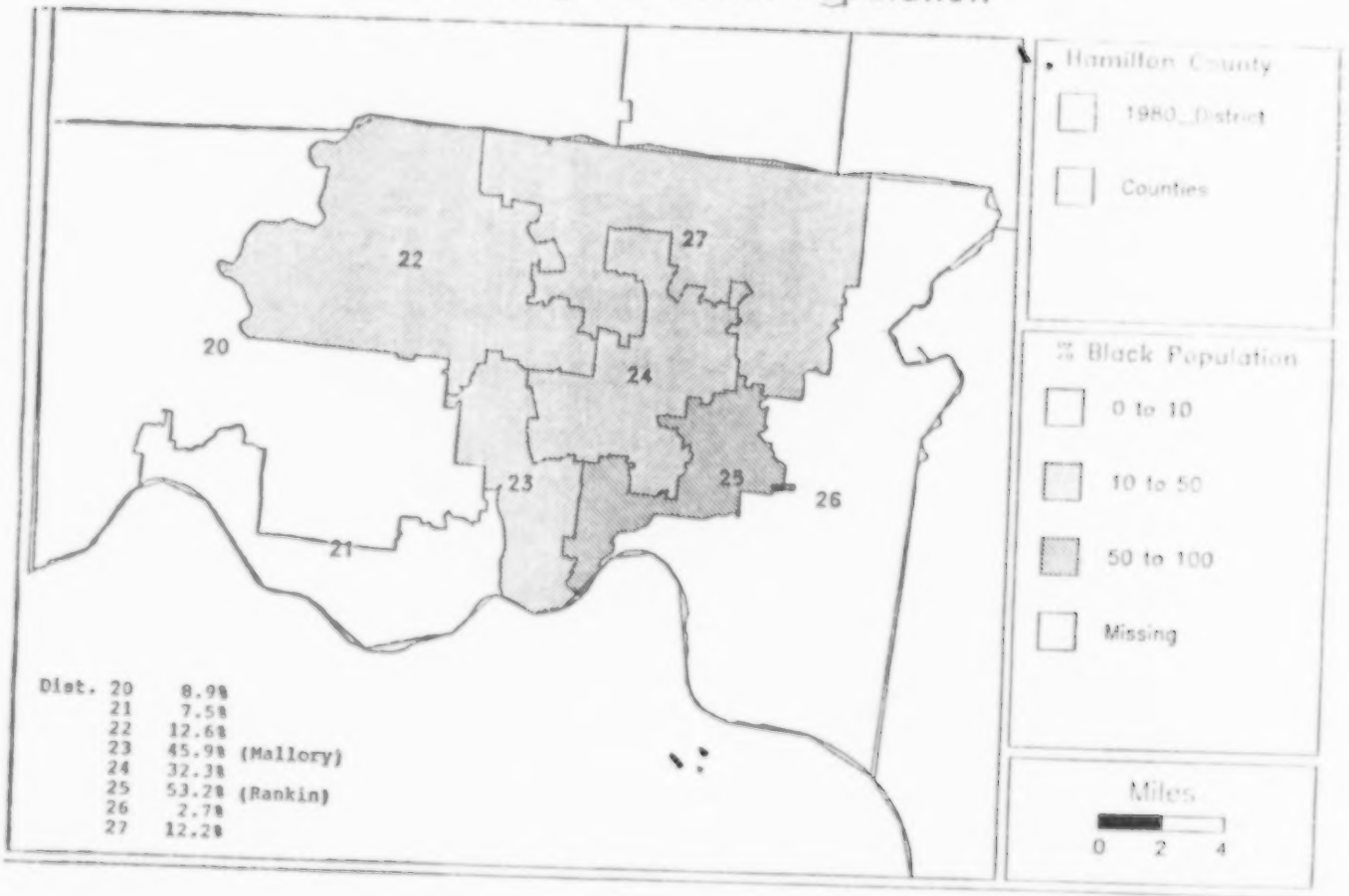


1991 House Districts

Percentage of Black Population

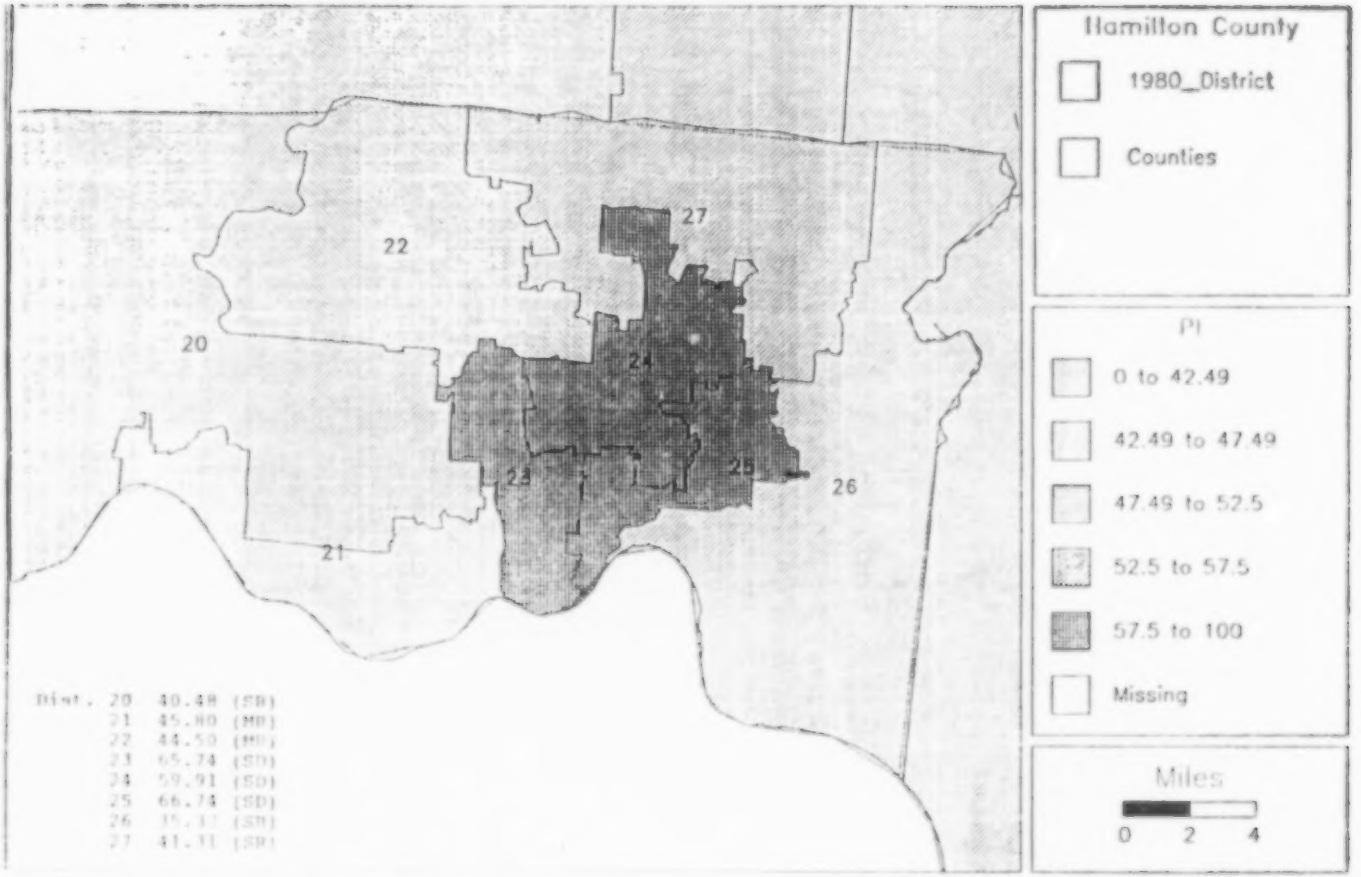


1981 House Districts
Percentage of Black Population



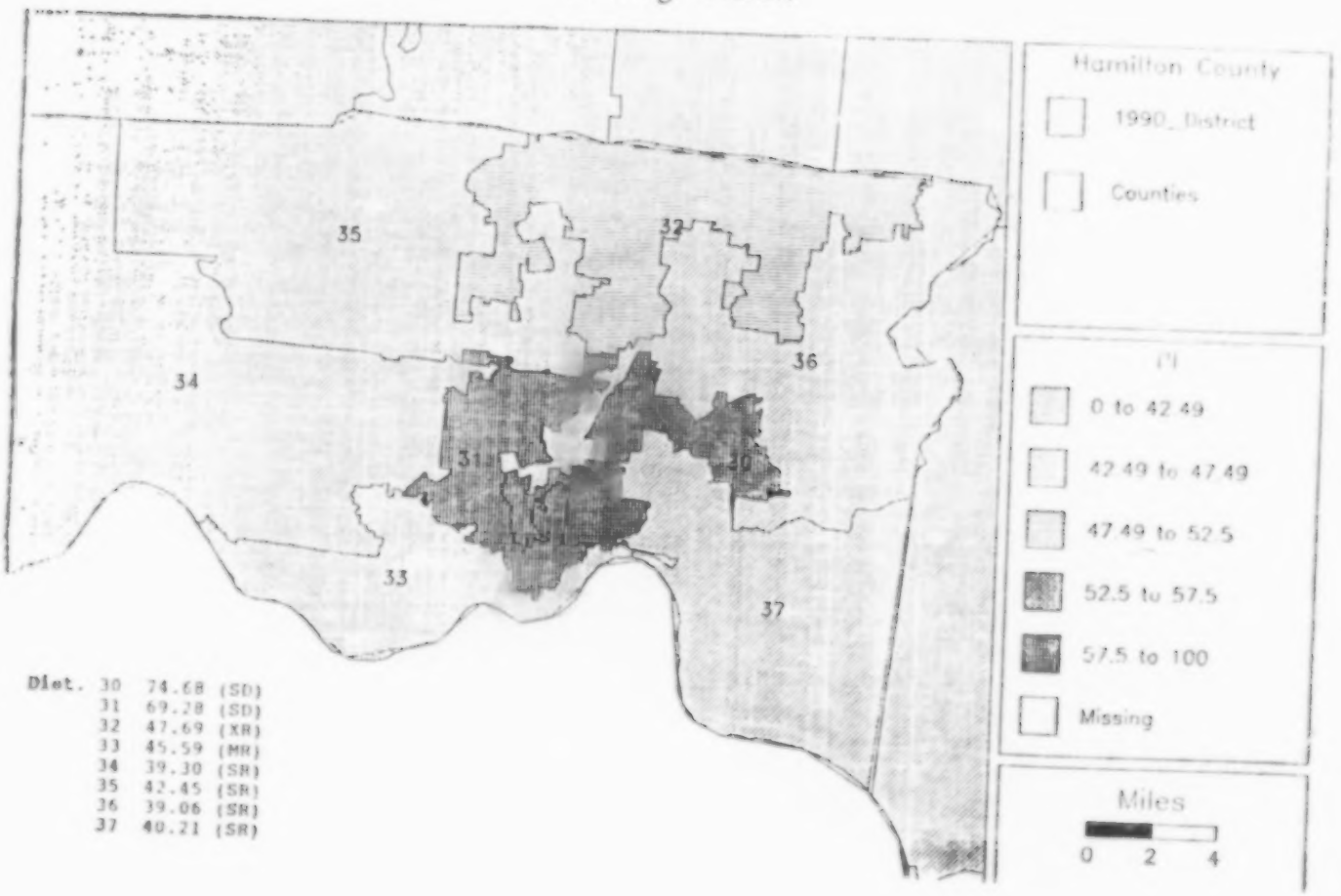
1981 House Districts

Voting Index



1991 House Districts

Voting Index



Dist.		
30	74.68	(SD)
31	69.28	(SD)
32	47.69	(XR)
33	45.59	(MR)
34	39.30	(SR)
35	42.45	(SR)
36	39.06	(SR)
37	40.21	(SR)

HAMILTON COUNTY

1981 DISTRICTS				1991 DISTRICTS [1]			
Minority Rep.	District No.	% Black Pop.	VI	Minority Rep.	District No.	% Black Pop.	VI
	20	8.9	40.48(SR)	L. H. Rankin	30	60.9	74.68(SD)
	21	7.5	45.80(MR)	W. Mallory	31	59.6	69.28(SD)
	22	12.6	44.50(MR)		32	23.9	47.69(XR)
W. Mallory (elected for 13 terms)	23	45.9	65.74(SD)		33	8.0	45.59(MR)
	24	32.3	59.91(SD)		34	2.1	39.30(SR)
L. H. Rankin (elected for 8 terms)	25	53.2	66.74(SD)		35	8.9	42.45(SR)
	26	2.7	35.33(SR)		36	4.5	39.06(SR)
	27	12.2	41.31(SR)		37	2.1	40.21(SR)
			3 D's 5 R's				2 D's 6 R's

[1] Closest Correspondence of Districts 23 and 25
23-31
25-30

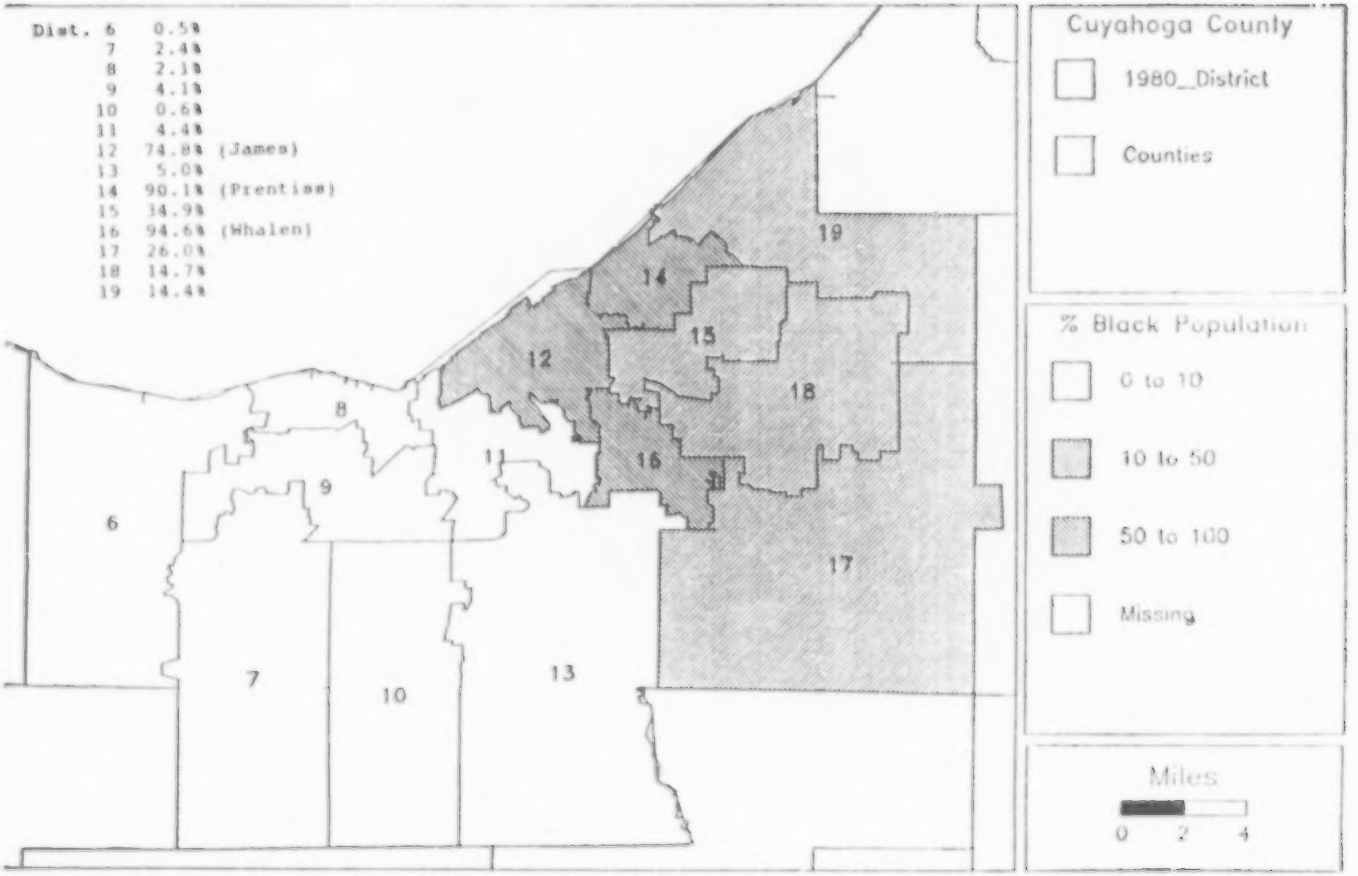
HAMILTON COUNTY SUMMARY

1. The Majority Plan increases black population beyond the previous highest levels in two Districts. District 30 is now 60.9%; District 31 is now 59.6%. The highest previous levels were 53.2% in District 25 and 45.9% in District 23.
2. The Majority Plan increases the Democratic index concentration beyond the previous highest levels. District 30 is 74.68; District 31 is now 69.28. The highest previous levels were 66.74 in District 25 and 65.74 in District 23.
3. There are now *five* districts with less than 10% black population. Under the previous boundaries there were *three* such districts.
4. There is now *one* minority impact district, District 32 with 23.9% black population percentage under the previous boundaries there were *three*, District 22 (12.6%); District 24 (32.3%); and District 27 (12.2%).
5. Minority Representative William Mallory has been elected for thirteen consecutive terms. His black population was increased from 45.9% to 59.6%; his Democratic concentration was increased from 65.74% to 69.28%.
6. Minority Representative L. Helen Rankin has been elected for eight consecutive terms. Her black population has been increased from 53.2% to 60.9%; her Democratic index has been increased from 66.74% to 74.68.
7. The net changes in political strength are as follows:

1981	1991
3 Strong D's (23, 24, 25)	2 Strong D's (30, 31)
	1 Marginal R (32)
2 Moderate R's (21, 22)	1 Moderate R (33)
3 Strong R's (20, 26, 27)	4 Strong R's (34, 35, 36, 37)
3 D's; 5 R's	2 D's; 6 R's

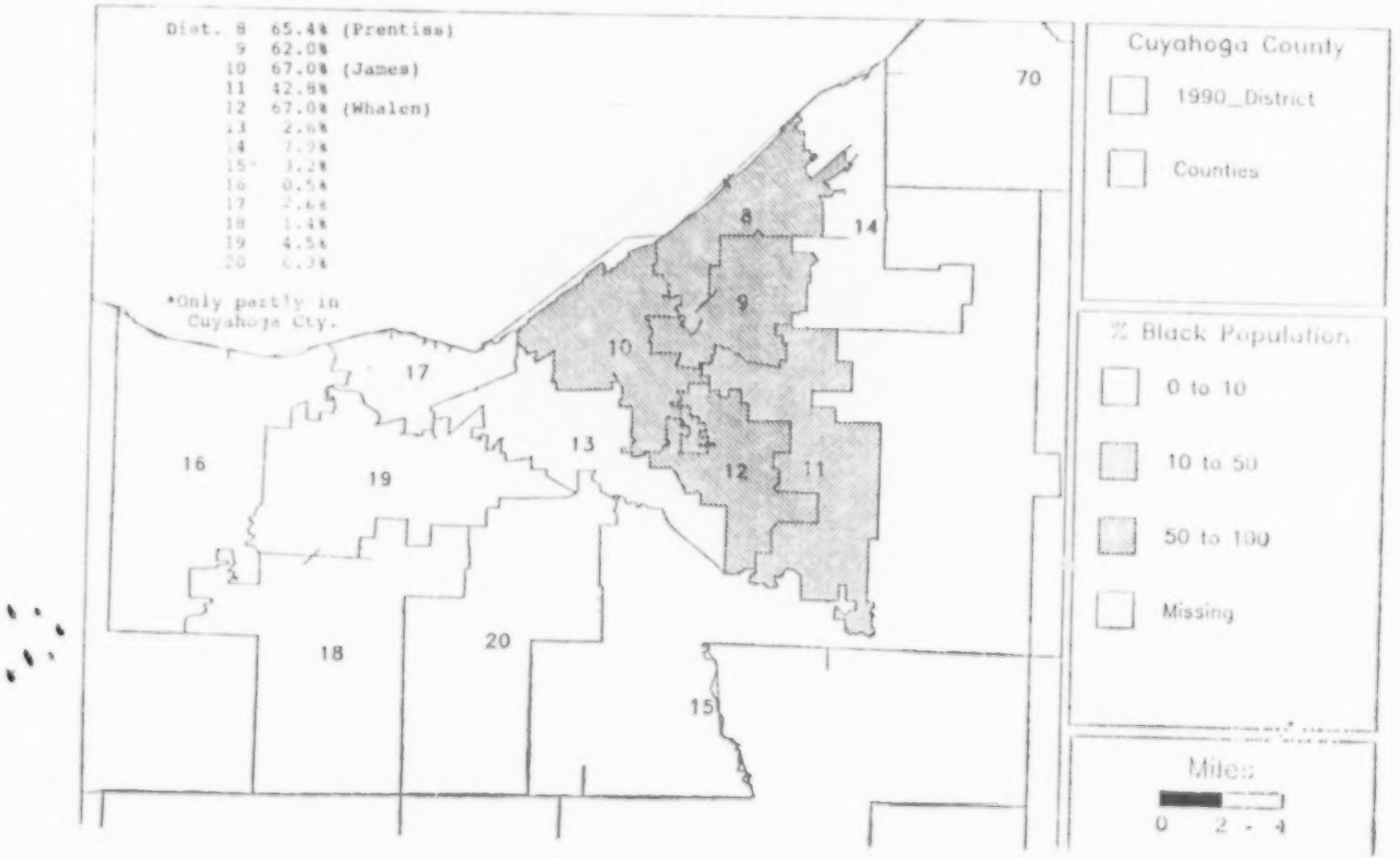
1981 House Districts

Percentage of Black Population



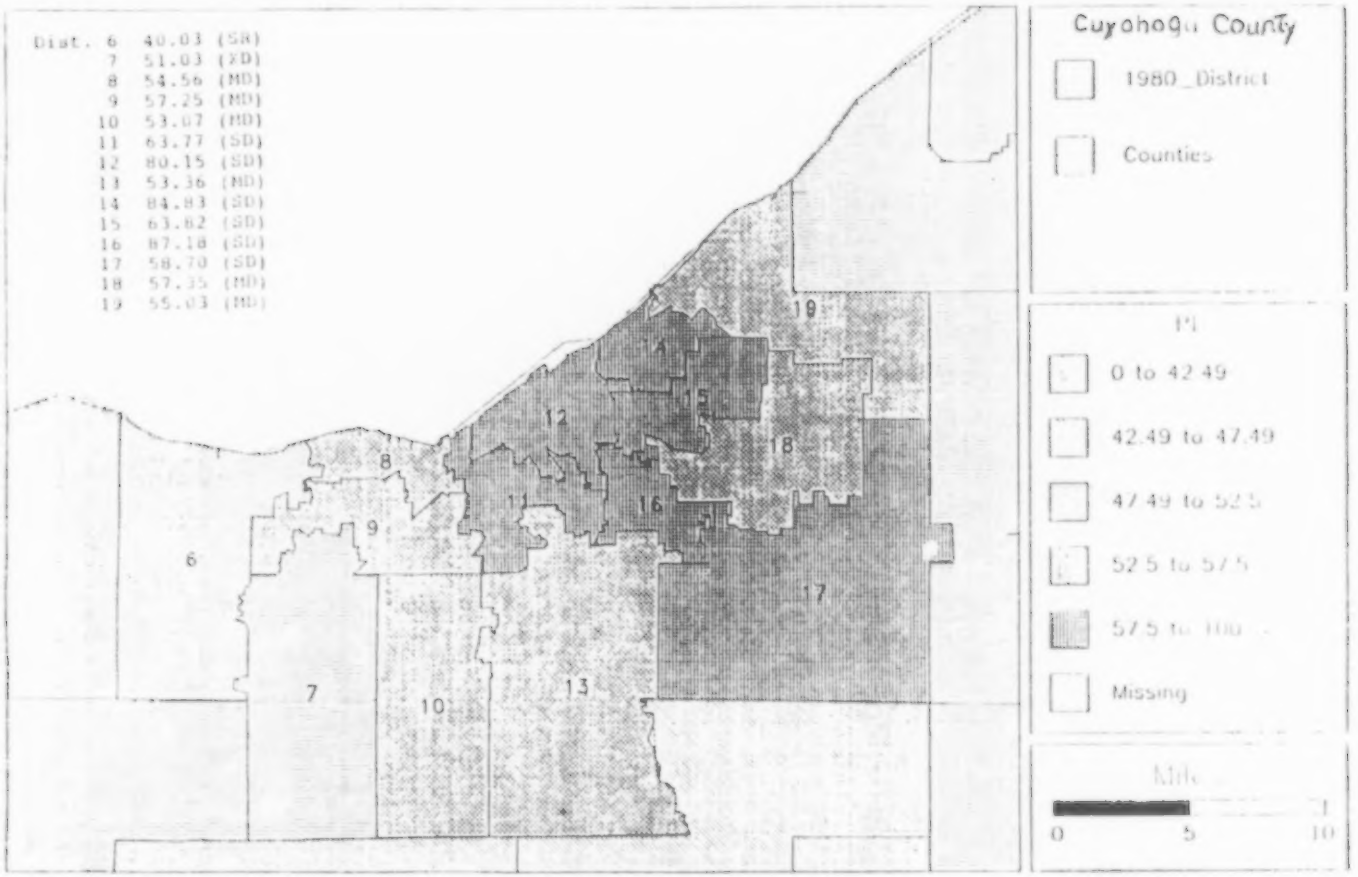
1991 House Districts

Percentage of Black Population



1981 House Districts

Voting Index



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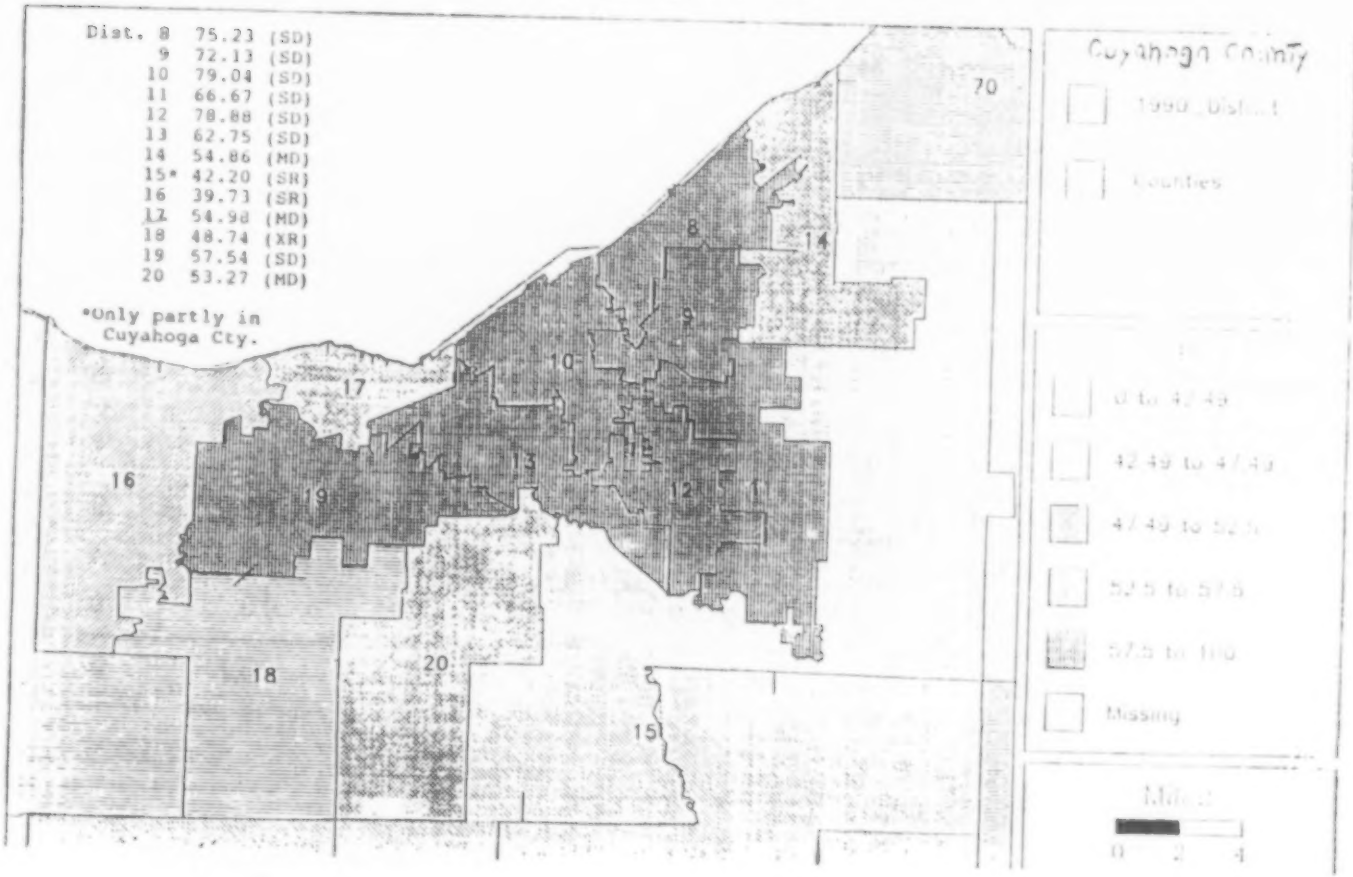
1991 House Districts
Voting Index



CUYAHOGA COUNTY

1981 DISTRICTS				1991 DISTRICTS [1]			
Rep. Minority	District No.	% Black Pop.	VI	Minority Rep.	District No.	% Black Pop.	VI
	6	0.5	40.03(SR)	C J. Prentiss	8	65.4	75.23(SD)
	7	2.4	51.03(XD)		9	62.0	72.13(SD)
	8	2.1	54.56(MD)	T. L. James	10	67.0	79.04(SD)
	9	4.1	57.25(MD)		11	42.8	66.67(SD)
	10	0.6	53.07(MD)	V. Whalen	12	67.0	78.88(SD)
	11	4.4	63.77(SD)		13	2.6	62.75(SD)
T. L. James (elected for 13 times)	12	74.8	80.15(SD)		14	7.9	54.86(MD)
	13	5.0	53.36(MD)		15*	3.2	42.20(SR)
C. J. Prentiss (elected for 1 term)	14	90.1	84.83(SD)		16	0.5	39.73(SR)
	15	34.9	63.82(SD)		17	2.6	54.98(MD)
V. Whalon (elected for 4 terms)	16	94.6	87.18(SD)		18	1.4	48.74(XR)

17	26.9	58.70(SD)	19	4.5	57.54(SD)
18	14.7	57.35(MD)	20	0.3	53.27(MD)
19	14.4	55.03(MD)			
		13 D's			10 D's
		1 R			3 R's

[1] Closest Correspondence of Districts 12, 14, 15, 16

12-10
14-08
15-09
16-12

* Only partly in Cuyahoga County

CUYAHOGA COUNTY SUMMARY

1. The Majority Plan increases the number of districts with black population exceeding 50% from three Districts (12, 14, 16) in 1981 to four Districts (8, 9, 10, 12).

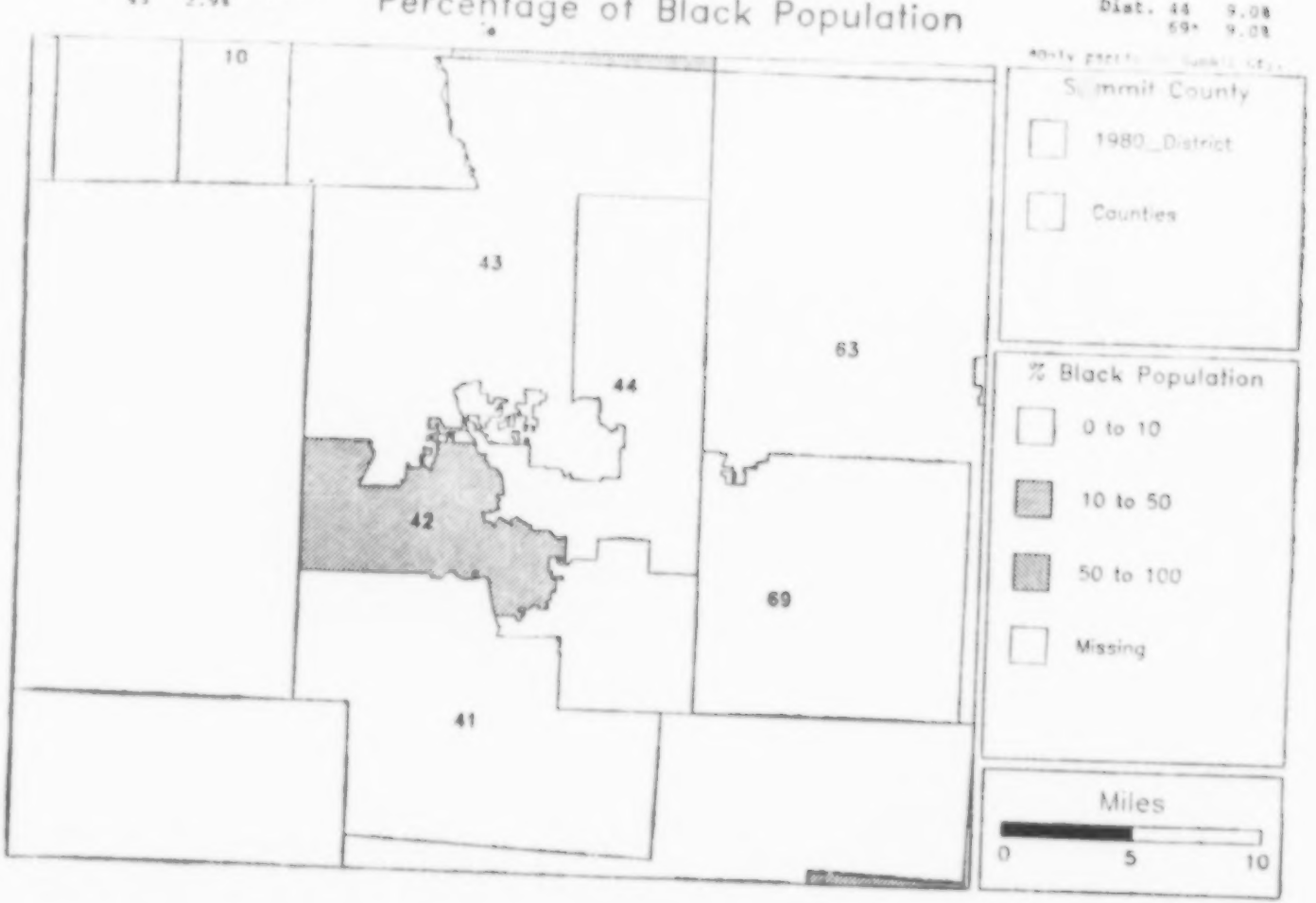
2. The Majority Plan decreases the number of minority impact districts from *four* to *one*. District 11 is the only impact district under the Majority Plan, with a 42.8% black population. The previous impact districts were 15 (34.9%); 17 (26.0%); 18 (14.7%); and 19 (14.4%).

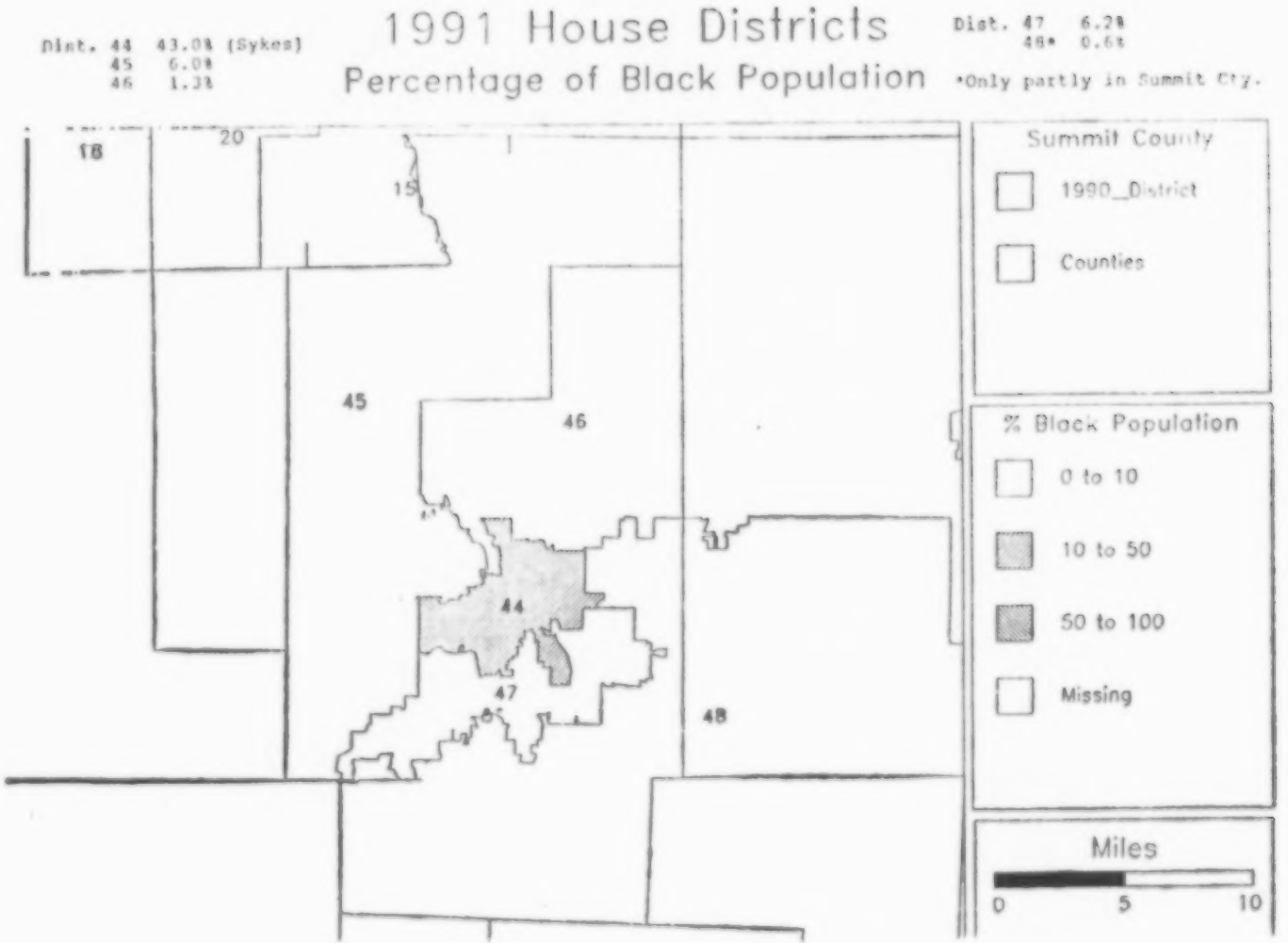
3. There are now eight districts with less than 10% black population. Under the previous boundaries there were seven such districts.

4. The net changes in political strength are as follows:

1981	1991
6 Strong D's (11, 12, 14, 15, 16, 17)	7 Strong D's (8, 9, 10, 11, 12, 13, 19)
6 Moderate D's (8, 9, 10, 13, 18, 19)	3 Moderate D's (14, 17, 20)
1 Marginal D (7)	1 Marginal R (18)
1 Strong R (6)	2 Strong R's (15, 16)
13 D's; 1 R	10 D's; 3 R's

1981 House Districts
Percentage of Black Population




Dist. 44 43.0% (Sykes)
45 6.0%
46 1.3%
1991 House Districts
Percentage of Black Population
Dist. 47 6.2%
48* 0.6%
*Only partly in Summit Cty.
18
20
15
1
45
46
44
47
48
Summit County
1990_District
Counties
% Black Population
0 to 10
10 to 50
50 to 100
Missing
Miles
0
5
10

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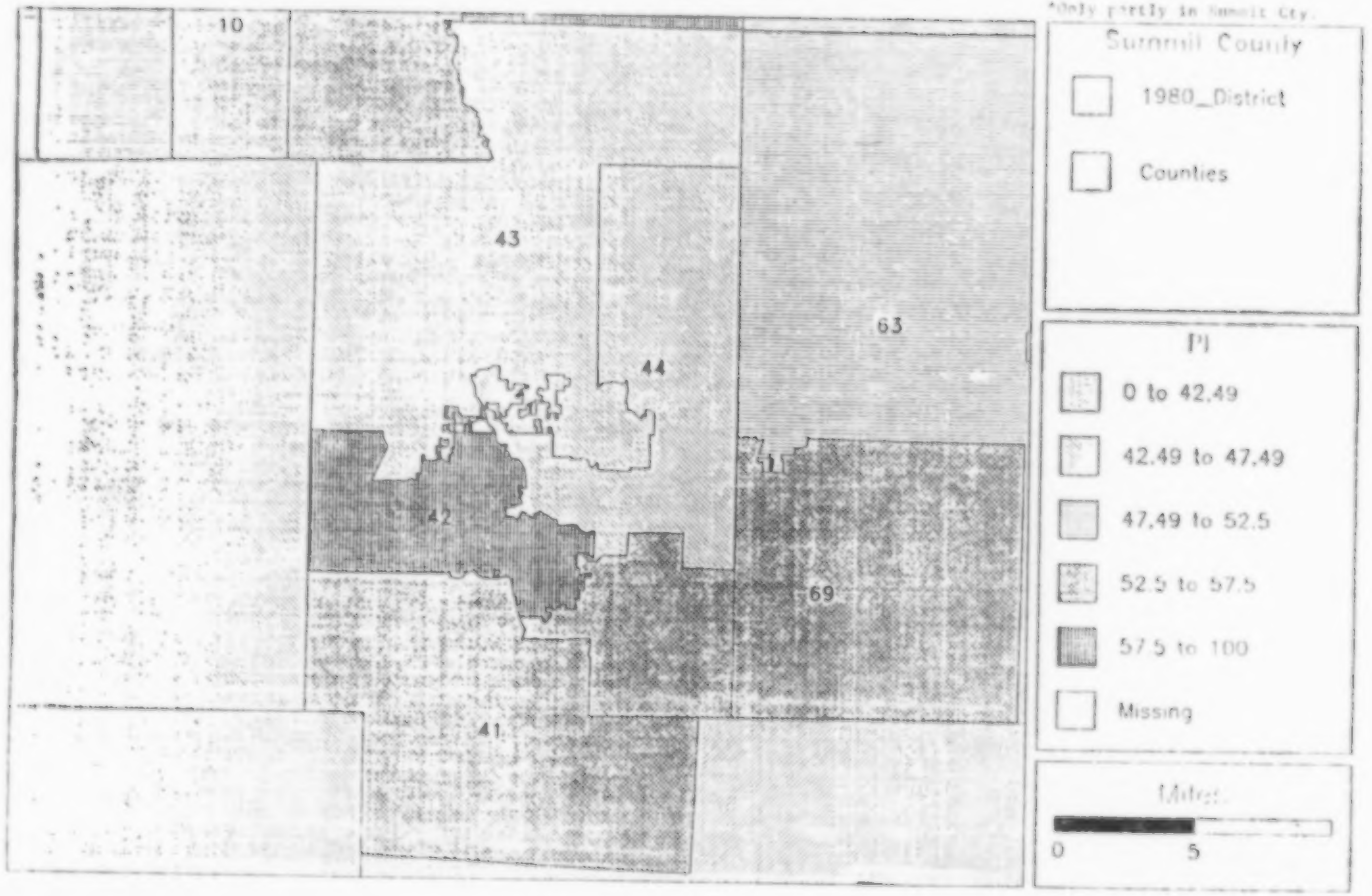
Dist. 41 54.18 (MD)
42 58.64 (SD)
43 46.57 (MR)

1981 House Districts

Voting Index

Dist. 44 46.43 (MR)
69* 57.32 (MD)

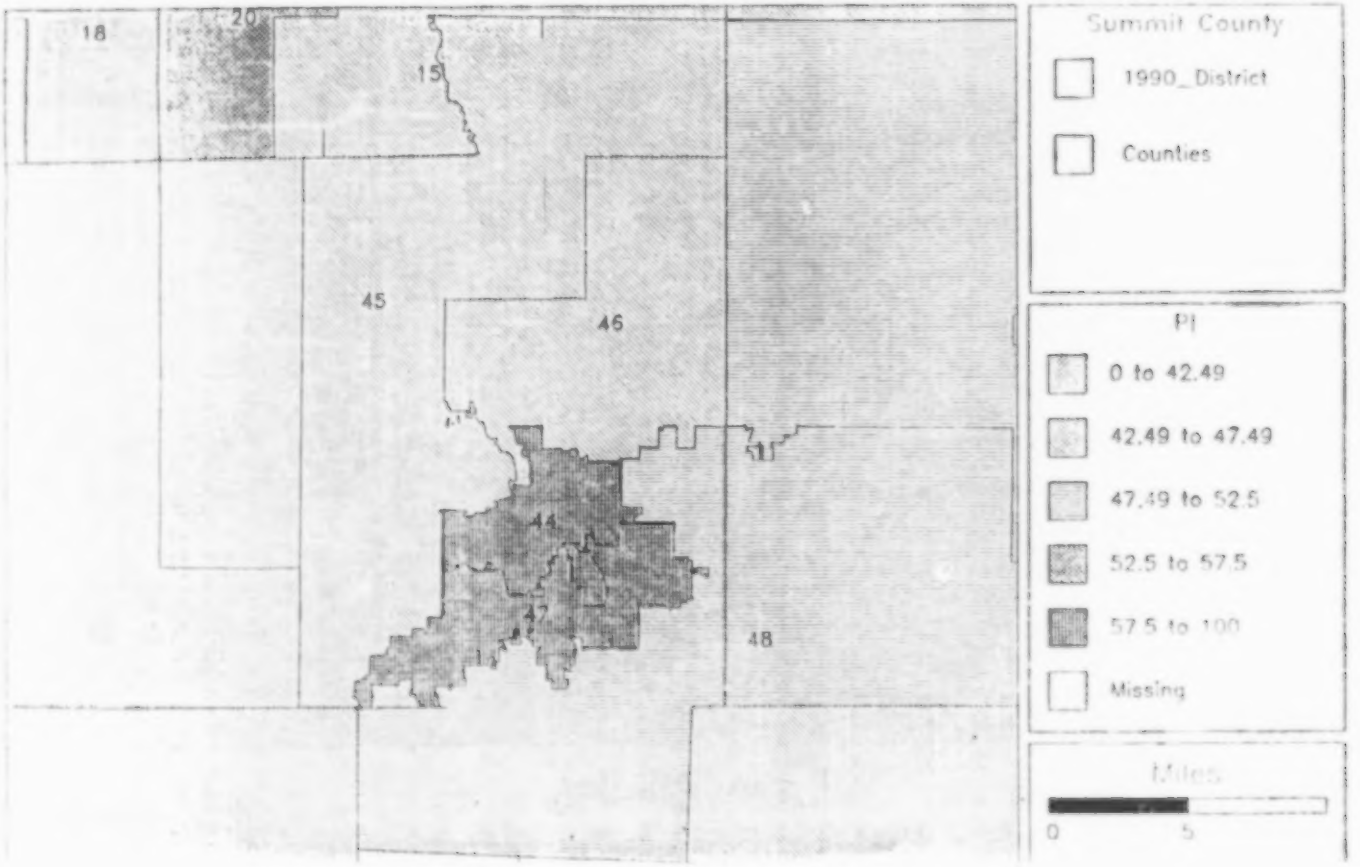


Dist. 44 72.21 (SD)
45 44.91 (HR)
46 43.06 (HR)

1991 House Districts
Voting Index

Dist. 47 59.99 (SD)
48* 51.35 (SD)

*Only partly in Summit Cty.



SUMMIT COUNTY

1981 DISTRICTS				1991 DISTRICTS [1]			
Minority Rep.	District No.	% Black Pop.	VI	Minority Rep.	District No.	% Black Pop.	VI
	41	2.3	54.18(MD)	V. Sykes	44	43.0	72.21(SD)
V. Sykes (elected for 5 terms)	42	35.2	58.64(SD)		45	6.0	44.91(MR)
	43	2.9	46.57(MR)		46	1.3	43.06(MR)
	44	9.0	46.43(MR)		47	6.2	59.99(SD)
	69*	9.0	57.32(MD)		48*	9.6	51.35(XD)
			3 D's 2 R's				3 D's 2 R's

[1] Closest Correspondent of District 42
42-44

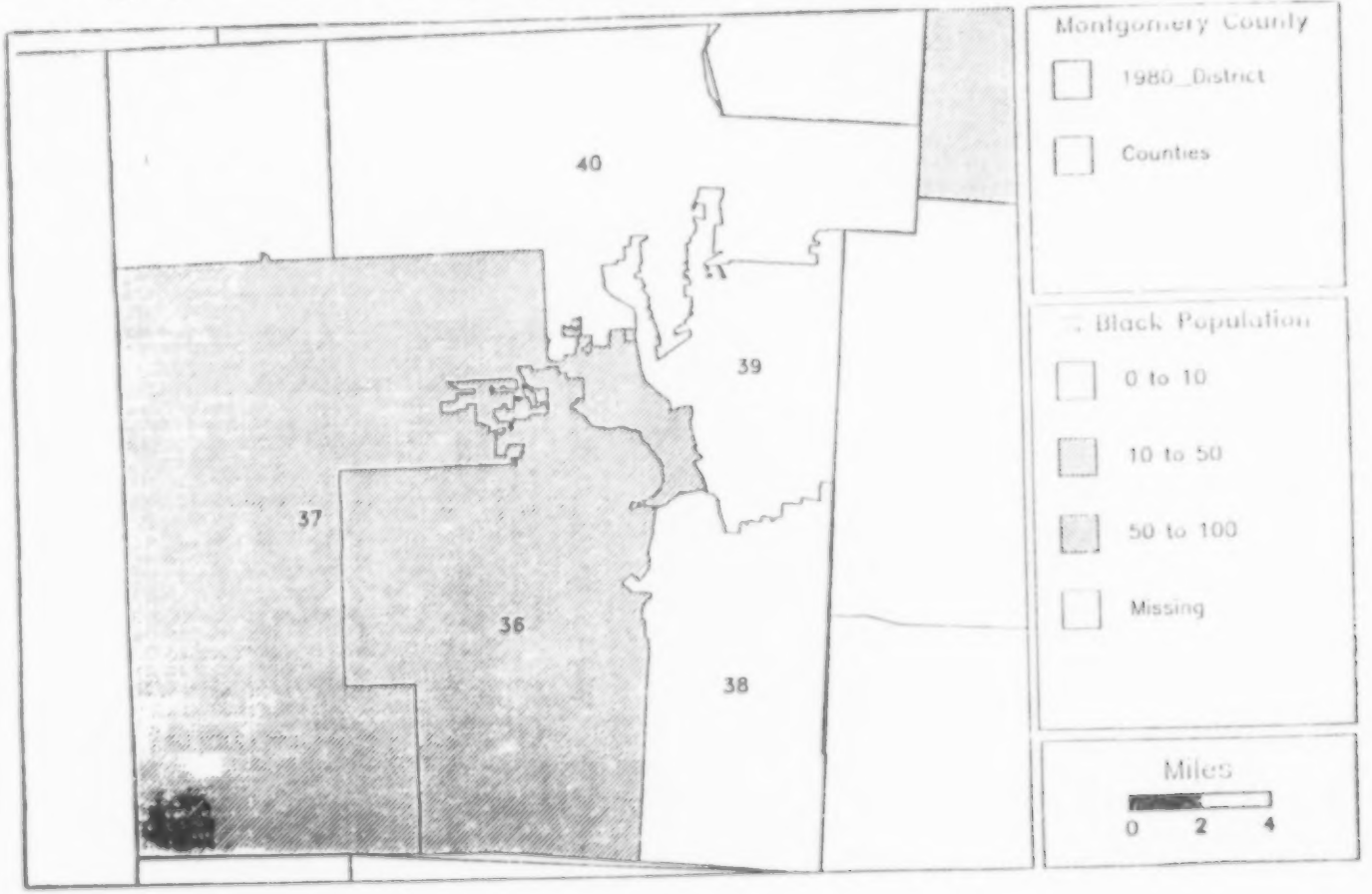
* Only partly in Summit County

1981 House Districts
Percentage of Black Population

Dist. 36 42.1% (McLin)
37 36.1% (Roberts)
38 0.9%

Dist. 39 4.7%
40 6.2%
68* 1.6%

*Only partly in Montgomery Cty.

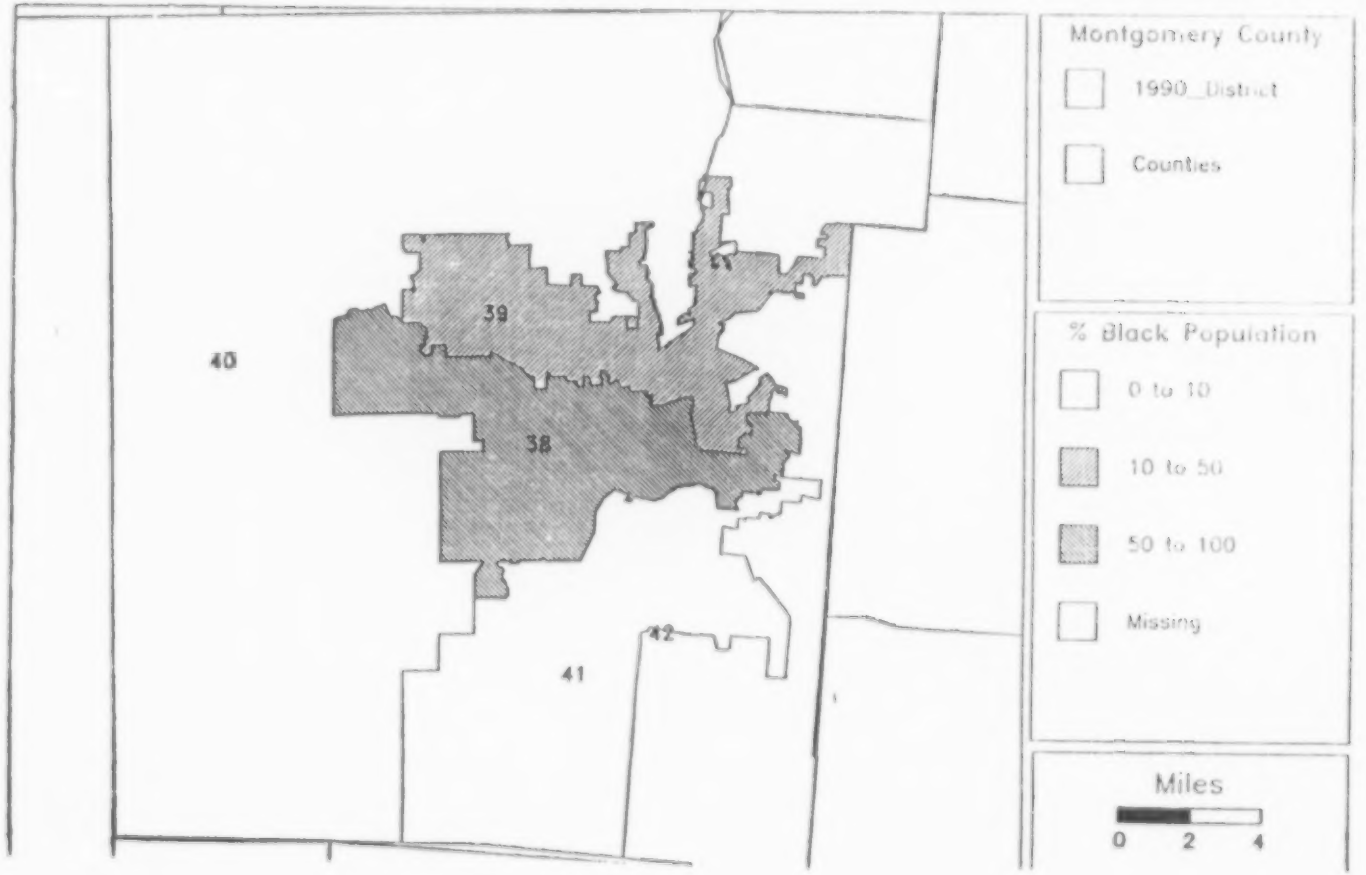


1991 House Districts
Percentage of Black Population

Dist. 38 54.6% (McLin)
39 32.2% (Roberts)
40 3.3%

Dist. 41 1.1%
42 2.8%
43* 3.8%

*Only partly in Montgomery Cty.



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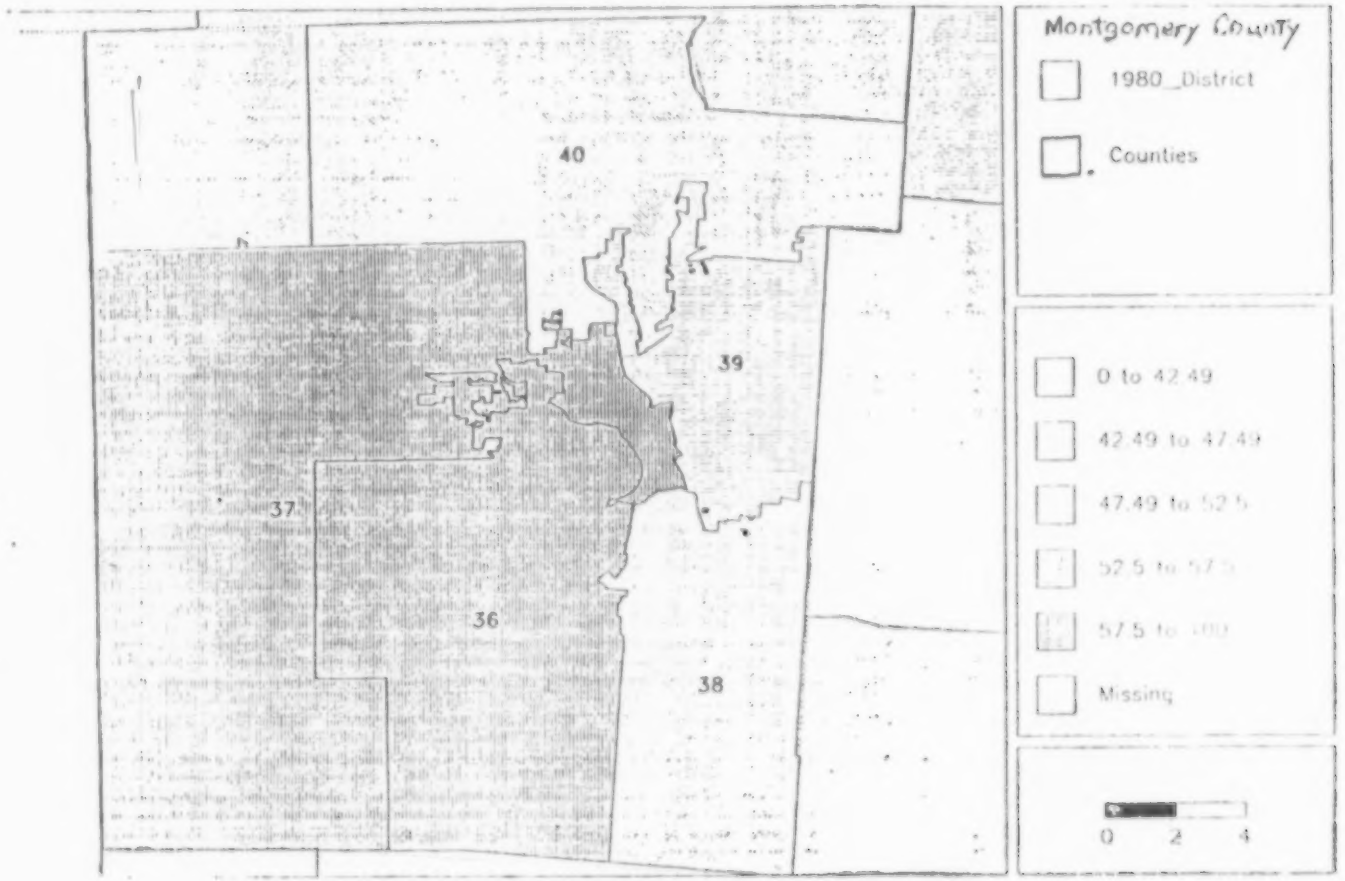
1981 House Districts

.Voting Index

Dist. 36 64.40 (SD)
37 62.52 (SD)
38 36.57 (SR)

Dist. 39 51.67 (XD)
40 43.30 (MR)
68* 41.60 (SR)

*Only partly in Montgomery Cty.



MONTGOMERY COUNTY

1981 DISTRICTS				1991 DISTRICTS [1]			
Minority Rep.	District No.	% Black Pop.	VI	Minority Rep.	District No.	% Black Pop.	VI
R. McLin (elected for 2 terms)	36	42.1	64.40(SD)	R. McLin	38	54.6	75.63(SD)
T. Roberts (elected for 4 terms)	37	36.1	62.52(SD)	T. Roberts	39	32.2	64.40(SD)
	38	0.9	36.57(SR)		40	3.3	45.34(MR)
	39	4.7	51.67(XD)		41	1.3	40.55(SR)
	40	6.2	43.30(MR)		42	2.8	39.77(SR)
	68*	1.6	41.60(SR)		43*	3.8	43.96(MR)
			3 D's 3 R's				2 D's 4 R's

[1] Closest Correspondence of Districts 36 and 37
36-38
37-39

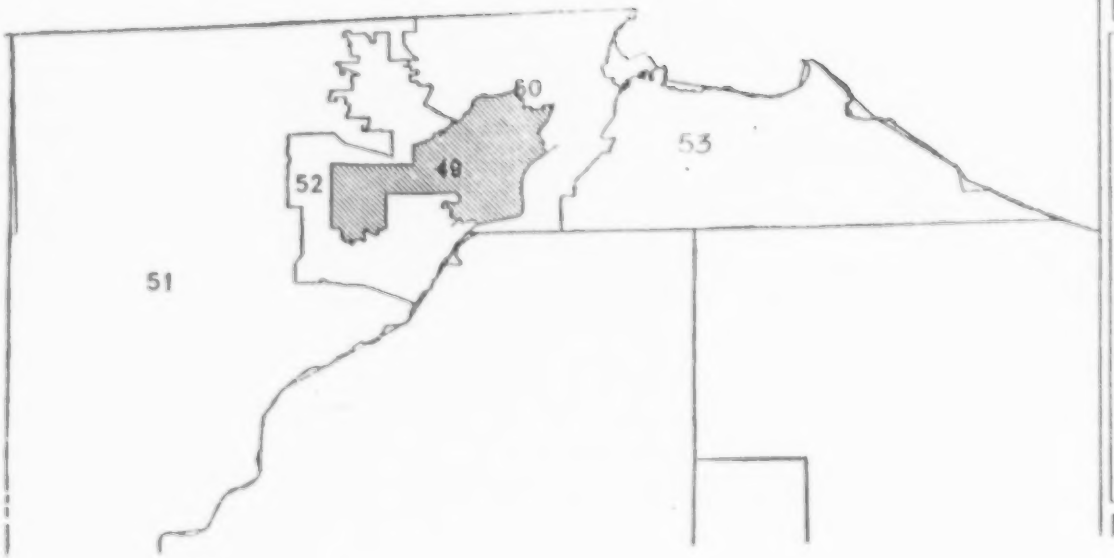
* Only partly in Montgomery County

1991 House Districts

Percentage of Black Population

Dist. 49 50.6% (Jones)
50 5.4%
51 2.4%
52 5.6%
53* 6.0%

*Only partly in Lucas Cty.



Lucas County

1990_District

Counties

% Black Population

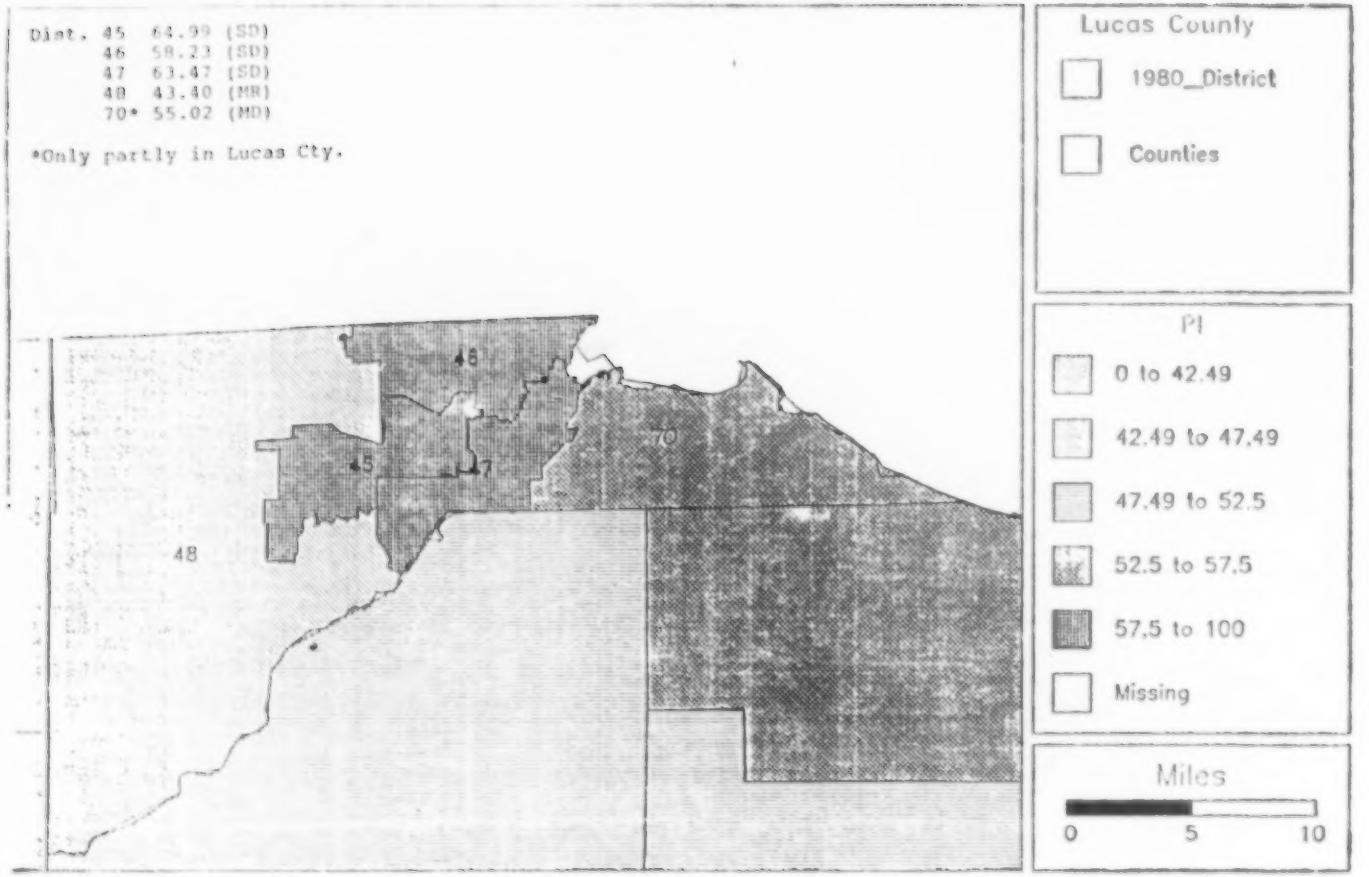
0 to 10

10 to 50

50 to 100

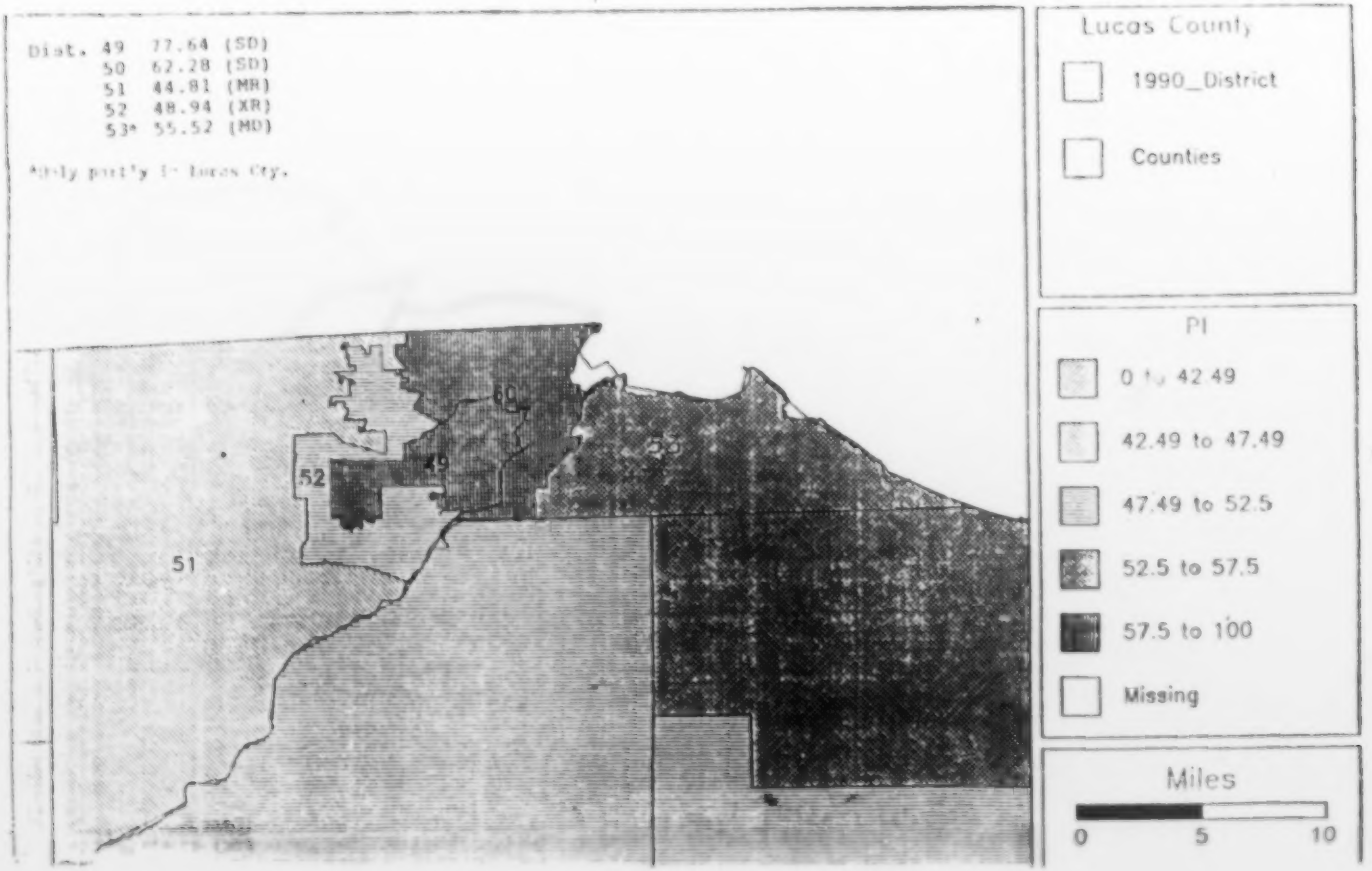
Missing

1981 House Districts
Voting Index



1991 House Districts

Voting Index



DEPOSITION OF DANA MATTISON
(December 11, 1991)
[Docket #108]

[17] Q. In connection with the matter of responsiveness, Mr. Mattison, I'm going to ask that this document be marked, please. I'm not sure what the Exhibit No. would be—

MR. COLLIER: Do you have any more copies?

MR. GILLIAM: No. If you want to get a quick copy of that, I'd appreciate it.

[18] (Exhibit marked for identification.)

Q. Mr. Mattison, I placed in front of you Mattison Deposition Exhibit 5 which contains seven pages beginning with 113th General Assembly and going through the 119th General Assembly and appears to contain a listing of various House bills, House joint resolutions.

Can you tell me what this is.

A. This is a list of key bills that we believe represents key issues facing the African-American community and parts of a legislative agenda that the Black Elected Democrats of Ohio initiated over four years ago. We have a written document called "The Black Agenda '86" that was the result of a key informant survey that we did again over four years ago and I actually wrote the Black Agenda, so I'm the person who actually pulled the document together.

We wrote that document in an effort to try and identify key legislative and public policy initiatives that the caucus would undertake in the upcoming four years and that in fact was the case. These particular bills were in part the result and I say in part because some of the bills unfortunately didn't get out of committee, that kind of thing, which wouldn't be reflected here, so you won't see everything that we identified in the Black Agenda but everything you see [19] here is in the Black Agenda. Okay.

Q. Would these bills be a fair test of the responsiveness of legislators to the Black Agenda you have identified?

A. Yes. We think absolutely it is a key list of bills, again, that represent initiatives and you'll note that most of them were undertaken and unfortunately what you don't have here is co-sponsorship. You got primary sponsors identified, but on almost all of the bills that you have listed here BEDO members either are primary sponsors or key co-sponsors.

Q. And were there votes as you understand it on these bills which could be tabulated?

A. That is my understanding, yes.

* * * *

DEPOSITION OF JOAN W. LAWRENCE
(December 11, 1991)
[Docket #111]

[75] Q. Looking at the "Let's Pretend" document, referring you to Hamilton County—and I understand that you did not read this, but I understand that you were at the seminar.

A. Uh-huh.

Q. And you did cause this package to be sent out?

A. I certainly did.

Q. Is this a portion of the package that you have read?

A. Oh, I think I did, yeah, and I heard his paper.

Q. Okay. And referring you to Hamilton County, it refers to, "In this 'Republican' county the strategy is to 'pack' as much of the Democrat minority as possible into two heavily Democratic districts with black majorities."

Do you know what the goal of doing that was in this hypothetical?

[76] MR. DELEONE: Object.

* * * *

A. Well, clearly, his whole objective here was to create what he was calling a Republican gerrymander. There's no mystery about it.

Q. And I'm just referring to Hamilton County. What he's doing in this hypothetical is packing black majorities into heavily democratic districts?

A. Uh-huh.

MR. DELEONE: Just a minute. If that question is a characterization of the witness's last answer, I object. If it is asking her whether that's what this proposed plan does, then I don't have an objection if she knows.

Q. Referring you now to Franklin County, it states that "Another 'Republican' county where the strategy is similar to that in Hamilton: 'Pack' the Democrats into HDs 29 and 31, each with enhanced black percentages." And that was the same strategy in this hypothetical? Do you know?

A. It seems to be.

MR. DELEONE: Show an objection and a motion to strike the answer.

[77] Q. And then it states, continuing in Franklin County, "Fragment the remaining Democrats into six Republican-dominated districts, eliminating white Democratic incumbents," et cetera and so forth.

A. Uh-huh.

* * * *

[112] Q. Are you aware, Mrs. Lawrence, that many of the ideas contained in Davis Horn's Republican Opportunities document, Exhibit 3, which is his Republican gerrymander, were, in fact, incorporated in the 1991 plan?

A. No.

MR. DELEONE: Just a minute. Don't answer that question. I object.

A. No.

Q. Are you aware of that?

A. No.

Q. Would it surprise you?

A. No it wouldn't surprise me.

MR. DELEONE: Just a minute. I object.

Q. Why wouldn't it surprise you?

A. Wouldn't surprise me because they were obvious. [113] Anyone who is attempting to—

Q. Politically gerrymander—

MR. DELEONE: Object. Let the witness finish her answer.

A. No. Anyone who is attempting to draw a plan is going to see the opportunities that exist, and especially in view of the fact that they had to protect minorities. You know, there were constraints around which the Apportionment Board had to operate, and—

* * * *

DEPOSITION OF GORDON G. HENDERSON
(December 12, 1991)
[Docket #112]

[6] Q. Would you state your name and address for the record.

A. I'm Gordon, middle initial G, Henderson, 220 South 19th Street in Richmond, Indiana.

MR. GILLIAM: Would you mark the document entitled "Curriculum Vitae March 1991" as Henderson Exhibit 1.

* * * *

[8] Q. Are there commonly recognized standards to govern the drawing of redistricting or reapportionment plans?

MR. COLLIER: Objection.

Q. You may answer.

A. Yes.

Q. And what are they?

A. There are four in all. One, you must avoid diluting minority voting strength: two, you must respect the principle of one person, one vote; three, you must respect the principle of compactness; and four, you must respect the principle of contiguity.

* * * *

[9] Q. Now, what is meant by taking care not to dilute minority voting strength?

A. Essentially what that means is that you must avoid either cracking or packing of minority voting strength.

Q. What is packing?

A. Packing is wasting minority vote by creating districts that are overwhelmingly composed of the populations of the minority in question, more so than are needed to enable that minority to either control or to have a measurable impact upon the outcome of elections in that district.

Q. And what is meant by cracking?

A. Cracking also wastes minority vote by [10] dispersing them among two or more districts so that minority voters are much less likely than otherwise to be able to influence the outcome of elections in those districts.

Q. Are you familiar with the term "candidate of choice"?

A. Yes, I am.

Q. What does it mean to you in this context of reapportionment?

A. The candidate of choice is usually used in the context of referring to the minority's candidate of choice and that means the candidate that is preferred or voted for by either a majority or a plurality of minority voters in an election.

Q. How do you determine which candidate gets the largest number of votes from minority voters?

A. There really is only one reliable way to do that and that is to do a bivariate regression analysis which will enable you to tell what percent of different racial groups, for example whites and blacks, vote for particular candidates. When you determine which candidate it is received a majority or the most vote of the population of minority voters, then that candidate is designated the candidate of choice of minority voters.

[11] Q. Is there any other technique that can be used to tell you what percent of a group votes for each candidate running?

A. Not really. Commonly people also perform homogenous precincts analysis, but that's as a backup to the regression analysis.

Q. Is there a name for the study done to determine what percent of whites and blacks vote for each candidate running?

A. Sure. That's called a racial bloc voting analysis, B-L-O-C.

Q. Are racial bloc voting analyses commonly done in connection with the drawing of redistricting plans?

A. Yes. Where there are minority populations involved, yes.

Q. And why is that?

A. Because it is important to respect, as I said, the principle that one not dilute minority voting strength, so therefore you have to know where the minority is, how many there are of them, and what impact upon their ability to choose a candidate of their choice the drawing of district boundaries in a particular location will have.

* * * *

[12] Q. Is it important to know the voting choices of white voters?

A. Yes, it is, because you are likely to find two results on a racial bloc voting analysis. You will find either that there is racial bloc voting or there is coalition voting and whether you find one or the other requires an analysis of the choices of both minority and majority voters.

Q. Has bivariate regression ever been noted in a Supreme Court decision to your knowledge?

MR. COLLIER: Objection.

A. Yes, it has, particularly in the Thornburg case.

Q. Is that Thornburg versus Gingles?

A. Yes.

* * * *

[13] Q. You may answer.

A. The extent of the discussion in that opinion makes it clear to me as a social scientist that bivariate regression is the preferred way to analyze racial bloc voting.

Q. Are you familiar with the case in detail?

A. Yes, I am.

Q. When the minority population happens to be a black population is the candidate of choice of the minority always going to be a black candidate?

A. Absolutely not.

Q. There has been discussion about Jesse Jackson and his race for the presidency in 1988 in this case. Would Jesse Jackson, for example, always be the choice of a black—would he always be the candidate of choice of the minority?

A. No. I testified in federal district court in Alabama that I examined the Democratic presidential primary of 1984 and that in some counties the candidate of choice, i.e. the candidate who won a majority of the black vote was not Jesse Jackson though he was running, but Walter Mondale who is, let me assure you, not a black person.

The question of a candidate of choice is a [14] question for empirical examination using bivariate regression not a matter of assumption or guesswork.

Q. Did you look at Jesse Jackson's vote in any section in Ohio in connection with your employment in this case?

A. Yes. I did.

Q. And what did you learn?

A. I looked particularly at Shaker Heights, Ohio, and I noted there that in that house district, which includes Shaker Heights, Jesse Jackson did extremely well in the Shaker Heights area. He did much less well in the other—in the remaining sections of the district.

Now, my general knowledge of Shaker Heights is that it has a population that is decidedly professional. It includes a small percentage of blacks and it tends to be upper income and from the figures reported by precinct I have a strong impression that Jesse Jackson's support there included—must have included a very substantial number of white voters—white vote—vote per white voters.

MR. GILLIAM: I'm going to come back to that for further detail later, Dr. Henderson.

I'll do it now. Would you mark this next document "Memorandum Re: Jesse Jackson Vote in 1988."

* * * *

[15] Q. And would you tell us what your conclusions [16] were as a result of this examination.

A. Well, the distribution of the Jackson vote particularly that which is described in paragraphs 3 and 5, Paragraph 3 of which indicates he got 21 percent approximately of the vote, but that 80 percent of his vote came from Shaker Heights area and that in three of the precincts in Shaker Heights he received more than 95 percent of the total vote.

Paragraph 7 indicates—I'm sorry, paragraph, the beginning, even before numbered paragraph one, the very first full paragraph indicates that the popuuation of District 18 is 14.72 percent black, but in the precincts of this house district other than Shaker Heights he received considerably less than 14 percent. In about half of those precincts he received less than 5 percent of the vote.

In other words, Shaker Heights gave Jesse Jackson the bulk of his vote in House District 18 and I don't think that that is a—can possibly be taken as an indication of black voting strength in House District 18.

* * * *

[17] Q. Would you identify Exhibit 3 and tell us what it is, please.

A. Exhibit No. 3 presents the results of my racial bloc voting analysis of 11 House districts in the election, general election of 1990 and the election for House District 12 in 1988.

These 11 districts currently are represented in the House by a black person.

Q. And what can you derive from looking at your analysis concerning the existence of significance racial bloc voting or the absence of significant racial bloc voting in the districts that you examined?

A. The data presented here support the following conclusions.

No. 1, there is clear coalitional voting in six of the 11 districts.

Q. And which districts are those?

A. 12, 14—

MR. COLLIER: Just a second, 12, 14—

A.—16, 23, 25, and 31. There is nonsignificant polarized voting in four districts, Nos. 36, 37, 42 and 45. [18] With respect to the 11th district which is District No. 29 the analysis is something of a toss-up because the homogenous precinct analysis shows coalition voting. The bivariate regression analysis shows nonsignificant polarized voting.

Q. You say it is nonsignificant, Dr. Henderson. What's the basis for your statement that the voting where there was any polarization was nonsignificant?

A. For that I really have two criteria: No. 1, I notice that these figures, particularly if you will look down the extreme column on the right that reports support for the democratic and Republican candidates from the bivariate regression, the figures of the percentage of whites voting for the Democratic candidate who in every case is the candidate of choice of black voters is very close to 50. In District 42 its 48.76, in District 37 its 45.98. The lowest it gets is in District 36 where it's still 35.44.

Now, secondly, I also observed that in the first six districts I mentioned the percentage of white voters voting for the Democratic candidate of choice of black voters is really quite high. In District 16 it's almost 68 percent. In District 12 it's 64 percent. That's really overwhelming support. The combination of those two things, the fact that where I have found [19] nonsignificant polarized voting, I call that nonsignificant because the percentage of white voters voting for the candidate of choice of black voters is almost 50.

Finally, regardless of the fact that less than half in these four instances of the white voters voted for the Democratic candidate who was the candidate of choice of black voters, the candidate of choice of black voters handily won in every one of these 11 districts. The fact that there may have been nonsignificant racial voting on

the part of whites did not prevent the election of the candidate of choice of the overwhelming majority of black voters and a solid majority in some instances of very close to a majority in other instances of white voters.

MR. GILLIAM: Would you mark the next document Exhibit 4, please, which is this set. It's entitled "Vote in Districts in which the Black Percent of the Total population was 10 percent or more for the Winning Democratic Candidate for the Ohio House of Representatives in the 1984 General Election."

(Exhibit marked for identification.)

MR. GILLIAM: Let the record reflect that I am stapling together results of "Vote in Districts in which the Black Percent of the Total population was 10 percent [20] or more for the Winning Democratic Candidate for the Ohio House of Representatives in the 1990 General Election," for 1990, election for 1988, for 1986, and for 1984.

Q. Dr. Henderson can you tell me what this exhibit is?

A. Yes, this is an exhibit which I prepared for the districts that you described and the prime concern to me here was to note the correspondence between the black percent of total population and the winning candidate's percent of the vote.

MR. GILLIAM: Would you mark the next exhibit, please, which is Henderson Exhibit 5.

(Exhibit marked for identification.)

Q. Now, Dr. Henderson, with the exception of 1982, is Deposition Exhibit 5 simply another way of presenting the same information for the districts indicated which are black districts as would appear in District 4—I'm sorry, in Exhibit 4?

A. That's correct. The format of the two documents are different, that's all.

Q. And the Deposition Exhibit 5 shows by district the Representative, the Democratic and Republican vote from 1982 to 1990; is that correct?

A. That's correct.

[21] Q. And is this all taken from public information?

A. Yes.

Q. Now, you said in a previous answer that the minority representatives in the 11 districts that you examined were elected by I believe your words were a large plurality or words to that effect.

Is that true—strike that.

What would you call a heavy plurality or a strong plurality?

A. Well, there are many ways that it might be defined properly so, but I noted, for example, that there are a very large number of Democratic—I'm sorry, there are a very large number of House districts in which the Democratic candidate won in which the margin of victory was 67.5 percent or more and by anybody's standards that's got to be counted a very, very substantial win. There are also some Republican districts—I'm sorry, there are also some districts in which the Republican candidate won which were carried by 67.5. So define it how you will.

When I look down a column as I'm looking at, for example, the first page of Exhibit 4, and I see that in District 12 the winning Democratic candidate got 87 percent, in 14 he got 88 percent, in 16 he got 93 percent. Those are overwhelming wins.

[22] Q. I think you noted that in District 42 the population is, the black population is 35.4 percent and the Democratic candidate won 65.5 percent of the vote; is that correct?

A. Yes.

Q. And I believe in District 23 the population is 45.9 percent black and the Democratic candidate won 70.5 percent of the vote, correct?

A. That's right.

Q. In your view what accounts for such success given that in all of these districts the blacks are nowhere near the majority of the population, in 7 of the 11?

A. There has to be substantial white cross-over voting.

Q. And would that be true of districts 23, 29, 42, 49, 43, 48?

A. Yes, it works and, of course, this merely reports data that are totally consistent with the racial bloc voting analysis.

MR. COLLIER: Can we have the question reread, please.

(Question read back.)

Q. And in five of the 11 districts the majority of white voters supported the candidate of choice; is that [23] correct?

MR. COLLIER: Objection.

A. Six.

Q. Six. Thank you. What is the significance of the size of the white cross-over vote in the 11 minority districts?

A. It has two reasons to be considered important. First of all, it is clear evidence of coalitional voting by which I mean that a significant portion of white voters are willing to vote for the candidate of choice of black voters, but considering that we are here on a redistricting matter, the existence rather across the board of substantial white cross-over voting means that the plan drawer must take particular care to avoid packing of minority voting strength.

Finally, the size of the white cross-over vote provides one measure or criterion by which you may assess what the dividing line is between packing and not packing of minority voting strength.

Q. Dr. Henderson, did I ask you to analyze and critique the proposed Republican apportionment plan, 1991 plan for the House of Representatives?

A. Yes, you did.

Q. And what did you do first?

A. Well, I first created a master dataset which [24] included what at the time I considered were all of the data that I would need in order to arrive at this critique and it included, of course, data for the existing plan and for the Republican plan and it included both election and population data.

I then very simply used my SPSS statistical package.

MR. COLLIER: What is that again? ST—

A. SP, as in Peter, SS. It stands for Statistical Package for the Social Sciences. I used that package to develop lists, counts of this, that and the other thing. For example, lists that would enable me to track where each piece of the existing plan that is now in a different district under the 1991 plan came from and where it went.

Conversely, where each piece of the 1991 plan came from and what the characteristics of each of these pieces were and how many of them there were. That's really where I began.

MR. GILLIAM: All right. Let me take a quick break.

(Off the record.)

Q. In your data file did you have both population and election data for the 1981 districts?

A. Yes, I did.

[25] Q. And did you also have the number of the district under the 1981 and the 1991 Republican plan?

A. Yes, I did.

Q. Now, did you check the 1990 census to determine that Ohio had a population of 10,847,115?

A. Yes, I did.

* * * *

[26] Q. What did you do after that?

A. I then looked at really what happened to the old districts under the '81 plan to see how they were treated under the 1991 plan and one of the early things I did was to identify all those districts that had a population

according to the 1990 census within plus or minus 5 percent of the norm and which, therefore, were potential candidates to be moved intact as a district under the '91 plan.

Q. How many of those did you find existed?

A. I found 44 of them.

Q. There are 44 that came within the 5 percent window; is that correct?

A. Right. And then I separated them as to whether they were Democratic leaning or Republican leaning to see how they had been treated and I found that there were 26 in the Democratic category and 18 in the Republican category.

And then I did two more things: I noted—I [27] identified what I called the largest piece. If for example a district under the '81 plan was divided into three pieces, I paid particular attention to whichever the three pieces had the largest population that was moved intact into some district under the '91 plan.

And then, again, I compared the treatment of these largest segments by the plan in the two categories of Democratic leaning or Republican leaning and I discovered two things: I discovered, No. 1, that the average of the largest pieces carried intact into the '91 plan on the Democratic side was approximately 66,000 and I noticed that the average of the largest pieces carried forward on the Republican side was 88,500. In other words, Democratic-leaning districts' populations were decidedly more fragmented than were the populations of those districts that leaned Republican.

MR. GILLIAM: I'm going to ask the reporter to identify the next exhibit as 6.

(Exhibit marked for identification.)

MR. GILLIAM: And while you're at it would you also identify Exhibit 7.

(Exhibit marked for identification.)

Q. Dr. Henderson, would you tell us what Exhibit 6 is, please.

A. Exhibit 6 is the listing of the data for the [28] Democratic-leaning and Republican-leaning districts and at the bottom of each of these two listings you will see the average population of those largest segments opposite the letters MEA, the N was dropped inadvertently, it should say "mean or average," and that's where I got those two figures that I just reported, 65,988 for the Democratic-leaning districts and 88,504 for the Republican-leaning districts.

Q. Why is that—you may have said this, but why is the number 65,000 for Democratic-leaning districts and 88,000 for the Republican districts significant? Why is that important?

A. Because it shows much greater fragmentation of Democratic-leaning districts than Republican-leaning districts.

Q. When you look at the document you have "Number of new districts, old district put in" in a heading; is that correct?

A. Yes.

Q. And what does that heading tell the reader of this document?

A. Well, let's take the first one. House District No. 3, which is the first one listed, was carried intact with its population of 108,276 into one district in the 1991 plan.

[29] District 29 on the other hand was broken up into five pieces and placed in five districts, parts of it, in the 1991 plan. And the largest number of people in any one of those five pieces was the 56,292 listed here.

Q. I see that District 3, which is a Democrat district, is left intact. Is that the only Democratic district that was left intact?

A. Yes.

Q. And were there Republican-leaning districts that were left intact?

A. Yes.

Q. Would those be those districts where the No. 1 appears after them?

A. That's right.

Q. What districts are those, please?

A. Those are districts 1, 5, 79, 80, and 82.

Q. A total of five Republican?

A. A total of five out of the 16, yes.

Q. What criterion did you use to identify a Republican-leaning from a Democratic-leaning district?

A. Whether the Republican or Democratic candidate for the House had carried that district in 1990.

Q. From this document is there evidence that the drawer of the plan treated Democratic- and [30] Republican-leaning districts differently?

MR. COLLIER: Objection.

A. Well, I certainly regard the size of the difference in average populations as substantial and so my answer to your question would be yes.

Q. With respect to breaking up Democratic districts, I want to hand you another exhibit which would be H-3. That will be marked Henderson Exhibit 8.

(Exhibit marked for identification.)

Q. Can you identify this document?

A. Exhibit 8 is the listing that I had SPSS generate in order for me to begin to track the number of pieces that the 1981 districts had been broken up into and that information is reported in the third column from the right for each of the 99 districts of the '81 plan.

Q. And is this the basic back-up information for the Exhibit No. 6 that we have looked at showing what the pieces were?

A. Yes, it is. It's also the back-up for 7.

Q. All right. Now, would you tell the reader of this document what each of these columns means and how they should look at it.

A. Well, this document is basically organized with one entry for each of the 99 districts in the 1981 plan [31] and for each of the—it indicates how many pieces each district was broken up into by the '91 plan and provides for each of those pieces voting for Republican and Democratic candidates for the House in 1990 and notes the black population, notes the Democratic candidates' percent of the total vote, and the black percent of total population and then also reports for each of the 81 districts the percentage of the vote won by the Republican and Democratic candidate for that House seat.

MR. GILLIAM: Would you mark the next document please which is entitled "Vote for Democratic House Candidate in 1990 in Districts in 1981 Districting Plan that are 10 percent or more Black in Population" as Exhibit 9.

(Exhibit marked for identification.)

Q. Can you identify Exhibit 9, please.

A. This lists giving the district numbers in the third column from the right or from the left, the percentage of the vote in each district and the mean or average vote for Democratic candidate in each district that fell in a category defined with respect to its black percent of the population beginning, for example, at the top with those that were 90 percent black or more, then those that were 50 to 89 percent black or more and so on. And in the column second from the left [32] it indicates the number of districts there were in each of those categories.

Q. What is the significance of this exhibit, Dr. Henderson?

A. Well, for one thing, it is still further evidence of how extensive is coalitional voting.

For example, it's impossible not to note that blacks tend to vote for Democratic candidates rather than Republican and, therefore, one cannot be the least bit surprised to

discover that in District Nos. 14 and 15 the average vote given to the Democratic candidate was 93.47 percent, but then you note the next category of which there are two districts in which the black percent of the population is 50 to 89 and the mean vote there is 80.83. Then you begin with districts that have a population that is less than majority black and in the category of 40 to 49 the average Democratic candidate vote was 69.57 which is a landslide by any definition and then all the way down to those districts that were 10 to 19 percent black the Democratic candidate still in those 11 districts received on average 79.74 percent of the vote.

Q. Now, with respect to the issue of—what does cracking mean to you, sir?

A. Cracking means taking a black minority [33] population concentration and dividing it into two or more pieces and putting those pieces into different districts.

Q. Did you find evidence of cracking of black Democratic districts or strongly leaning Democratic districts with a significant black population?

MR. COLLIER: What's the significant black population? Object to the question.

Q. You may answer.

A. Yes, I did.

Q. And did you prepare some exhibits showing that?

A. (Indicating).

Q. All right.

MR. GILLIAM: All right, would you mark the next exhibit please, which would be Exhibit No. 10.

(Exhibit marked for identification.)

MR. COLLIER: We don't seem to have it.

MR. GILLIAM: All right. I'll get that for you.

Q. Dr. Henderson, we have an Exhibit 10 in front of you entitled "Republican- and Democratic-leaning districts compared—how districts in which either Republican or Democratic candidate for the House in 1990 won 67.5% or more of the vote were treated in the 1991 Republican plan."

[34] Would you tell us what your exhibit shows.

A. It shows, first of all, that there were 31 Democratic leaning and 13 Republican leaning such districts and it also separates each of these groups out as to whether their total population was less than 10 percent black or was 10 percent or more black giving us four subject categories which enables us to compare a Democratic-leaning district with a low black population or a Democratic-leaning district with a high black population meaning 10 percent or more with Republican-leaning districts divided into comparable categories with respect to the percentage of their population that is black. And for comparison purposes what it shows is that overall Republican-leaning districts were on average divided into 2.6 pieces whereas Democratic districts were divided into 3.5 pieces. Among Democratic-leaning districts when population was 10 percent or more black those districts were divided into 3.92 pieces and in the Republican category, when the black population was less than 10 percent, they were divided into 2.46 pieces.

In summary, the district most likely to be divided into the maximum number of pieces was a Democratic-leaning district in which the population was more than 10 percent black. The district least likely [35] to be divided into many pieces was a Republican-leaning district in which the percent of the population that was black was less than 10 percent.

Q. Dr. Henderson, I note back on your Exhibit 6 that there were two Republican-leaning districts that were divided into five pieces, is that correct, or perhaps that's a one.

A. Did you say one or two?

Q. I said two but I think there is only one.

A. There is one, right.

Q. What about the one district, how was that treated in terms of cracking compared with the Democratic districts that were in the category as five?

MR. COLLIER: Objection.

A. Two of the Democratic-leaning districts were divided into five pieces and the one Republican-leaning district that was divided into five pieces, the largest segment that moved intact into one of the districts in the '91 plan had more than 57,000 people, the Democratic-leaning districts had 56,000, 36,000 in the largest segments of those two districts that were divided into five pieces. This is more favorable treatment for the Republican-leaning than for the Democratic-leaning districts.

* * * *

[39] MR. COLLIER: Objection, move to strike.

MR. GILLIAM: I object to interrupting the witness. Please finish your answer.

A. Because a test, one test that can be used for a gerrymander is to see whether districts likely to be—to lean toward one party or one group have been created so that that party or group can win them handily as by more than 65 percent of the vote and does not treat [40] districts controlled by the opposite party or group in the same fashion and that's exactly what this exhibit says has been done here.

Q. Is there back-up information to support Exhibit No. 11?

A. Well, it could be assembled as I did from almost any one of the lengthy lists, printouts from the master data file that are already in evidence, as, for example, Exhibit 8. It's a matter of counting it up.

Q. Exhibit 8 is the document which is entitled "Population of and Votes for House Candidate showing where pieces into which 1980 districts were divided were put in the 1991 Republican Plan." Is that right, sir?

A. That's right.

* * * *

Q. Would you describe for the record again what packing is.

A. Yes. Packing is drawing district boundaries in [41] such a fashion that more members of some group, such as blacks, are placed within a district that are necessary given the observed patterns of voting behavior for that group to control or at least to exercise effective influence upon the outcome of elections in that district.

Q. Does the exhibit that we were just looking at, No. 11, does that show evidence of packing of Democrats by Republican majority board?

A. Decidedly so.

Q. Is it significant to you that there are no Republican districts over 65 percent with respect to the index you used?

A. Yes, particularly since there are 16 Democratic districts in that category.

Q. Why is 65 percent such a significant figure to you, Dr. Henderson?

A. Well, I don't really know that it has that great significance, 65, but I could just as well I think say 64 indicates a landslide win by a candidate in that district.

Q. Does the creation of 16 districts of over 65 percent political index favoring Democrats show packing, massive packing of Democratic voters?

MR. COLLIER: Objection, leading.

[42] A. To me it does, yes.

Q. Did you make any determination as to whether or not the Republican plan also packed blacks into districts?

A. Yes, I did.

Q. And is that set forth in a document that you have prepared?

A. Yes.

Q. What is the title of the document?

A. This is "Vote for Democratic House candidate in 1990 in districts in Republican plan that are 10 percent or more black in population."

* * * *

MR. GILLIAM: Would you mark this, please, as [43] Exhibit No. 12.

(Exhibit marked for identification.)

Q. What is Exhibit No. 12, Dr. Henderson?

A. Exhibit 12 provides a listing for districts in the 1991 plan that are 10 percent or more black in population arranged by categories on that criteria, i.e., what percent of the population of the district is black beginning with those four districts in which the population of which is black is greater than 65 and then continuing on as before in categories of 50 to 64, 40 to 49 and so on, down to 10 to 19. And having arranged the districts in that fashion, the really valuable information is found in the right-most column which indicates the average vote for Democratic House candidate in 1990. And it indicates, for example, that in those four districts that were 65 percent or more black in population the Democratic candidate won approximately 87 percent of the vote.

In the next category down those that were 50 to 64, the average vote for Democratic House candidate was almost 83 percent.

But even in those districts in which the population was less—I'm sorry, in which the black population was less than a majority of the population of the district, with only one exception the Democratic [44] candidate for the House did well. That one exception is in the one district in the category of 20 to 29 percent black in population in which the Democratic candidate for the House won 43 percent of the vote.

Even in the five districts in which the percent of the population of black was 10 to 19 the average vote for the Democratic House candidate was almost 60 percent.

Now, it is clear, I think, from these data organized as they are here that you certainly do not need to create districts that are greater than 65 percent and probably don't even have to create them that are 50 percent or more black in order for a Democratic candidate to win. Again, it's because this is just one more way of noting how substantial and important is the white cross-over vote that will support the candidate of choice of black voters.

This, in short, is a good clear example of the packing of black voting strength.

Q. Is there any way that a plan drawer can figure out what percent of a district's population should be black?

A. Yes, there is.

Q. And how would that be done.

A. It really is an empirical inquiry. One would [45] hope that a plan drawer would look at how much cross-over vote there was by a racial bloc voting analysis, would look at turn-out rates, and on that basis arrive at some reasonable rational defenseable approximation of what the cut-off point is between packing and nonpacking of minority voting strength. And I don't know exactly what cut-off point might be precisely derived from just this one exhibit, but it is clear that creating districts that are 50 percent or more black guarantees that you're going to pack minority voting strength on the basis of past electoral behavior.

* * * *

[49] Q. (By Mr. Gilliam) Exhibit 16, Dr. Henderson, would you identify that, please. What's the heading of the document?

A. The heading of this exhibit is "Packing and Cracking of Black Voting Strength in Hamilton County in the 1991 Republican Plan."

Q. All right. And what is Exhibit 15?

A. Exhibit 15 explains the layout of data on Exhibits 16 and 14 and also the meaning of the color coding.

Q. All right. Now, with respect to let's take Exhibit No. 14 which is "Packing and Cracking of Black Voting Strength in Franklin County in 1991" and identifying the color coding, first of all, tell us what that is.

A. All right. The yellow indicates a district or a piece of a district in which the black percent of the population is 10 percent or more.

The green color indicates a district or a piece of a district in which the population is less than 10 percent.

The orange coloring indicates a Democratic-leaning district in which the Democratic [50] candidate won in 1990.

The blue color indicates a district or a piece of a district in which the Republican House candidate won in 1990.

Q. All right. With respect to the first page of Exhibit 14, what can one tell from looking at that page by following the color coding?

A. This tells what happened to each of the districts and each of the pieces of those districts in the 1991 plan, how they were treated in the Republican 1991 plan and thus, for example, if you look in the second column from the left you find four yellow coded districts, 29, 30, 31, and 32, in which the black population was 10 percent or more.

If you then look in the column second from the right you see that the Republican plan created two districts in which the black percent of the population was 10 percent or more.

By the same token, if you look at the 1981 plan you find there four districts that are color coded green meaning the percent of the population black was less than 10 percent, four of them.

If you look at the Republican plan, second column from the right, you find that it creates seven districts in which

the minority—in which the black [51] population is 10 percent—is less than 10 percent.

Politically, in the 1981 plan the Democratic candidate carried five of the districts. Under the 1991 Republican plan the Democratic candidate would carry only three. Under the 1981 plan the Republican candidate carried three of the districts. In the 1991 Republican plan the Republican candidate would carry six.

* * * *

[52] Q. (By Mr. Gilliam) All right. Dr. Henderson, looking at page B of Henderson Exhibit 14, what does that show?

A. This shows what happened in the 1991 Republican plan to each of the four pieces that District No. 28 was divided into.

It shows that the '91 plan took two pieces of the district that had a black population of 10 percent or more and put them into districts in which the black percent of the population was less than 10 percent. And it took two pieces that had a population that was less than 10 percent black and kept them in districts that were less than 10 percent black.

It took a piece of District 28 that had been carried by the Democratic candidate by 65 percent and [53] put it into a district that was now carried by—would be carried by the Democratic candidate with almost 70 percent. It took three pieces that had been won by the Republican candidate and retained them in districts that would also be won by the Republican candidate.

Q. Would you look at page C of the document, please, and tell us what that indicates.

A. This shows what was done with each of the five pieces that District 29 was divided into. It took five pieces each of which had a black population of 10 percent or more and put two of them in the district that was 10 percent black or more and three of them in districts that had black populations of less than 10 percent.

These same five pieces had each been carried by the Democratic candidate and the Republican plan took two of these pieces and put them in districts that would now be won by the Democratic candidate and put the other three pieces in districts that would be carried by the Republican candidate.

Q. Would you look at the next page, D, and tell us what you see on page D, District No. 30.

A. This shows that three of the pieces—I'm sorry, three of the six pieces that District 30 was divided into had majority of 10 percent or more black [54] and they were put in districts—in two districts that are now more than 10 percent black. The third piece was put into a district that is less than 10 percent black. It took three pieces that had a black population of less than 10 percent and retained them in districts that also had a black population of less than 10 percent.

All six pieces had been carried by the Democratic candidate. Under the Republican plan only three of the new districts would be carried by the Democratic. The other three would be carried by the Republican.

Q. And what does page E show with respect to Exhibit No.—with District No. 31.

A. It shows that in the '81 plan two of the pieces were 10 percent or more black and they were retained, moved into districts in the Republican plan that were also 10 percent or more black. Three of them had populations of less than 10 percent black and they were moved into districts that were also 10 percent or less—less than 10 percent black.

Four of the five pieces that District 31 was divided into—let me back up.

In the 1981 plan four of the five pieces were won by the Democratic candidate. In the Republican plan three districts can be won by the Democratic candidate.

[55] Under the '81 plan one district was carried by the Republican candidate. In the Republican plan two districts are.

Q. Two segments are; is that correct?

A. Two districts.

Q. All right, two districts, correct.

All right, go ahead.

A. The next page indicates what happened to the four pieces that District 3[illegible] were divided into. In the '81 plan two of these had populations that were 10 percent or more black. In the Republican plan one district has a population that is 10 percent or more black.

Two of these pieces had populations that were less than 10 percent black and they were placed in districts in the Republican plan that were also 10 percent or less black.

All four of the pieces of the 1981 plan were carried by the Democrats. In the Republican plan these pieces were distributed so that the districts—of the districts they went into only two would be carried by the Democratic candidate.

Q. What does page G show?

A. This shows the treatment of District No. 33 which was divided into four pieces. All four of these [56] had majority, black—had populations that were less than 10 percent black and in the Republican plan these pieces went into four districts which also had populations that were less than 10 percent black. But these four pieces had also all been carried by the Democratic candidate and yet in the Republican plan they were placed in districts, one of which would be carried by the Democratic candidate, the other three would be carried by the Republican candidate.

Q. Go ahead, sir.

A. The next page shows what happened to old District 34. It was divided into three pieces and all three of them had populations that were less than 10 percent black. In the Republican plan these three pieces were put into dis-

tricts all three of which also had populations that are less than 10 percent black. All three of the pieces were carried by the Republican candidate. All three of these districts in the Republican plan are also carried by the Republican candidate.

And finally, on the next page, we see what happened to old District 35. Divided into three pieces each of which pieces has a population that is less than 10 percent black and each of which pieces were carried by the Republican candidate. In the Republican plan [57] these three pieces are carried into three districts, each of which is less than 10 percent black, each of which is carried by the Republican candidate.

Q. What opinion, if any, do you have concerning the "Packing and Cracking of Black Voting Strength in Franklin County in the 1991 Republican Plan"?

A. This document I consider to be a road map detailing how you create a racial gerrymander, and I say that because districts or segments color coded yellow, which represent districts or segments that are 10 percent or more black, are generally under the Republican plan reduced in number. Those districts happen to be, because of the close association between blacks and Democratic support. The districts most likely to be color coded orange meaning they were carried under the '81 plan by the Democrats, and in most instances in the following districts, those numbers are also reduced under the Republican plan.

Color coding of yellow—color coding of green or blue on the left-hand side indicates a Republican opportunity. Color coding of green or blue on the right-hand side indicates a Republican opportunity realized and there is not a single instance in this, on any of the pages of this document in which a Republican opportunity to pack and crack black voting strength and [58] thereby create districts that could be won by the Republicans was missed, not won. Every opportunity was taken and was realized.

* * * *

[59] By Mr. Gilliam:

Q. Dr. Henderson, I'm going to direct your attention again to Exhibit No. 7. I don't believe you've explained that exhibit.

Would you tell us that it is.

A. This is with reference to those 44 districts, 26 of which were classified as leaning Democratic and 18 of which were classified as being—18 of which were classified as being learning Republican and it divides each group into those that were—had populations less than 10 percent black and those that had populations that were 10 percent or more black and it notes the average of the population of the largest segment of the old district moved intact into the 1991 Republican plan.

It shows, for example, that among the 26 Democratic-leaning districts there were eight with populations of 10 percent or more and the average of the largest segment was 60,609.

[60] It shows by contrast that among the Republican-leaning districts there were 15, that's 15 of the 18, with black populations of less than 10 percent and the average of those largest segments was 89,133.

Q. Dr. Henderson, what is the reason why you chose districts with 10 percent more blacks or 10 percent less blacks? Why the 10 percent cut-off figure?

A. It's not a magic figure and it's not 100 percent consistent, but generally speaking if a district has 10 percent or more population it tends to vote for Democratic candidates. If it has a population of less than 10 percent it tends to vote Republican. So there is that really very, very close correlation. It's not 100 percent consistent because, for example, you'll find occasionally a district with 11 percent black population that has voted for Republican, but it probably works at least 95 percent of the itme.

So, in effect, when I identify the populations in this way, within the Democratic-leaning districts, the districts

with black population of more than 10 percent are likely to be the most heavily leaning Democratic districts. And when I identify among the Republican-leaning districts those that have black populations of less than 10 percent I am likely identifying those that are most likely of all to vote [61] for a Republican candidate.

And the whole point really of developing this exhibit was to show that the districts that received the most favorable treatment under the Republican plan, that is to say, where the greatest effort succeeded in keeping the largest number of people together from the old district were in those Republican-leaning districts where the population was less than 10 percent black. Those most likely to be fragmented in the sense that the average of the district segments moved into the new plan was lowest were the most heavily black, the most heavily Democratic-leaning districts, the eight that I've already identified as having a mean population of 60,609.

Q. I want to direct your attention to a document previously marked as Deposition Exhibit Henderson No. 16 entitled "Packing and Cracking of Black Voting Strength in Hamilton County in the 1991 Republican Plan," and would you identify that, please. And tell us what the colors and lines indicate.

A. This document is parallel to Henderson Exhibits 14, and 16. Like 14, takes each of the districts in the 1981 plan and each of the segments into which each of those districts was divided by the 1991 plan and shows what happened to it and its characteristics.

[62] The color code is always the same. The yellow indicates a district that has a black population of greater than 10.

Green means a district that has a black population of less than 10 percent.

Orange indicates a district that voted Democratic.

Blue indicates a district that voted Republican.

And in Hamilton County what you see overall represented by the first page was that the 1981 plan had five

districts in which the population was more than 10 percent black. The 1991 plan has only three.

The 1981 plan had two districts with black populations of less than 10. The 1991 Republican plan has five such districts.

The 1981 plan had four districts which were carried by a Democrat. The 1991 Republican plan has three. The 1981 plan had three districts carried by a Republican. The 1991 plan has five.

So, again, it's like, exactly like Exhibit 14. The green and the blue on the left-hand side represent Republican opportunities, the green and the blue on the right-hand side represent Republican opportunities realized. And the document indicates that almost all of [63] the time Republican opportunities were, in fact, realized and that in order to do this it was accomplished by greatly increasing, for example, look at new District 30, the black percentage of the population and also by cracking of black populations.

Q. Would you turn to page B and tell us what page B shows with respect to District No. 21.

A. This is the treatment accorded to old District 21. It shows that in the '81 plan one segment was more than 10 percent black and in the 1991 plan one segment is still more than 10 percent black.

Two segments were less than 10 percent black in the new plan, two were also less than 10 percent black. Under the old plan two of the segments voted Democratic. In the new plan two of the segments voted Democratic. One in the old plan voted Republican. One in the new plan voted Republican.

Q. All right. What does page C show.

A. This shows the treatment accorded to old District 22. In old District 22, two segments had populations greater than 10 percent black. Two had populations less than 10 percent black. In the new plan two districts have populations greater than 10 percent black. Two have populations less than 10 percent black.

In the old District 22 two of the segments [64] voted Democratic. Two of the segments voted Republican. In the new plan one segment votes Democratic—I'm sorry, in the new plan one district votes Democratic, three districts vote Republican.

Q. And would you explain what D is.

A. This is the treatment accorded to old District 23. It was divided into five segments. All five of the segments had populations that were more than 10 percent black.

In the new plan two of the districts into which two of these segments went have populations that are more than 10 percent black. The other three segments were placed in districts which in the new plan had populations less than 10 percent black.

In old District 23, four of the segments voted Democratic, one voted Republican. In the Republican 1991 plan, these four Democratic segments have been put so that three of them are in districts that are likely to go Democratic and won plus the old segments that was Republican go into Republican districts two of which are likely to remain Republican.

Q. And what does E show.

A. This is the treatment accorded to District No. 24. It, too, was divided into five segments. Three of those were majority black—I'm sorry, were more than [65] 10 percent black. In the new plan they go into three districts which are also more than 10 percent black. Two of the segments in old 24 have populations less than 10 percent black. In the new plan they go into districts which are also less than 10 percent black.

All five segments of old 24 voted Democratic. Two of those five segments go into districts in the new plan that are also Democratic, but three of them go into districts in the new plan that are likely to be Republican.

Q. And what does page F show.

A. This shows the treatment afforded District 25. It was also divided into five segments. Four of those seg-

ments had populations that were 10 percent or more black. In the new plan two of these districts go into—I'm sorry, two of these segments go into districts that are 10 percent or more black. Two of them go into segments that are less than 10 percent black.

In the old plan one of the five segments was less than 10 percent black. It goes into a new district that is also 10 percent black.

All five segments of old District 25 voted Democratic. Three of those five go into districts in the new plan that vote Democratic but the other two go into districts that are likely to be Republican.

[66] Q. All what does J show?

A. This shows the treatment afforded old District 26. Also divided into five segments. One of those segments was 10 percent or more black. It goes into, in the new plan, a district that is more than 10 percent black. Four of the segments in old 26 were less than 10 percent black. One of those four goes into a district that is now more than 10 percent black and three of them go into districts that are less than 10 percent black.

In the old 26, one of the segments went Democratic. It goes into a district in the new plan that also is likely to be Democratic. Four of them were, of the segments, voted Republican and they go into districts which are also likely to be Republican.

Before we leave this page there is one other thing. I think of, under the new plan, Republican District No. 32 as being one of a kind because of the relationship between the yellow and the blue. You will notice that we have now created under the 1991 plan a district that is 23.89 percent black, but it will be carried rather handily by a Republican, the estimate being that the Republican candidate there will get, receive 43.35 percent of the vote. That's a unique relationship. I know of no—I'm sure that there is no other district or segment of the district anywhere which [67] produces Republican strength of that size in a population—with a population

that is that black. More likely is the relationship which you see, it happens to be—

MR. COLLIER: What page are you looking on?

THE WITNESS: G.

MR. COLLIER: House District 32?

THE WITNESS: I'm looking at G.

MR. COLLIER: Are you talking about the new district?

THE WITNESS: Yes, the new 32.

Q. Go ahead, finish your answer.

A. If you want to look through this document or almost any of the other documents that have been introduced in evidence, you're going to be hard pressed to find any other district or segment that is 23.89 percent black that voted anything less than "solidly Democratic." There are no exceptions. There is no other district or segment that is 23.89 percent black that voted Republican. This is a first.

Q. Go ahead and finish your answer with respect to page H.

A. This details the treatment of old District 27 and its three segments. Two of them have populations 10 percent or more black. One of them goes into a district [68] that is more than 10 percent black. One of them goes into a district that is less than 10 percent black. One of the three segments of old 27 was less than 10 percent black. It also goes into a new district with a population that is less than 10 percent black.

All three of the segments in old 27 voted Republican. They are placed into districts in the new plan that are likely to be Republican.

Q. Did you draw a chart entitled "One of a Kind" District No. 32?

A. At one time this exhibit was entitled One of a Kind, but I chose to give this same title to all three of these exhibits and just bring out the one of a kind point verbally.

* * * *

[113] Q. Do you understand that you're presenting your [114] analysis regarding Section 2 of the Voting Rights Act? Is that what you're intending to do?

A. I intended to offer my testimony chiefly as evidence of the general proposition that anyone drawing, engaged in plan drawing must avoid diluting minority voting strength.

Q. That is a good point, anybody engaged in apportionment must avoid minority voter dilution. Is that what I just heard you say?

A. Yes.

Q. And they must do that affirmatively, isn't that true?

A. Well, I don't see how you do it if not affirmatively.

Q. Good. And deliberately, isn't that true?

A. All right.

Q. You agree with that?

A. I can buy that.

* * * *

[117] Q. (By Mr. Collier) And you say you didn't use [118] the 1988 election data in total for all House districts, correct?

A. Just for 12.

Q. Nor did you use '86.

A. Correct.

Q. Nor did you use '84?

A. Right.

Q. Nor did you use '82?

A. I didn't have '82.

Q. Did you have '84, '86, and '88?

A. I had '86 and '88 and I had the Jesse Jackson data for '84.

Q. But you didn't use that in your database?

A. No, it did not go into the database.

Q. How long would it have taken you to put the '86 and '84 data into the database?

MR. GILLIAM: For what purpose?

MR. COLLIER: For the purpose of doing his testimony.

MR. GILLIAM: What testimony?

MR. COLLIER: What have we been doing for the last five hours?

MR. GILLIAM: I don't know what the purpose of your question is.

Q. Can you answer?

[119] MR. GILLIAM: Do you understand the question?

A. It would have taken a while.

Q. How long would it have taken, just roughly?

A. To put exactly what?

Q. The '86 and '88 election results for House races?

A. A week.

Q. Would you have preferred to do that if you had the time?

A. I would have been interested to do some of the House districts in '88. I doubt that I would have had much interest in entering the '86 data.

Q. Why not?

A. Because my concern was to do a racial bloc voting analysis and the population data that must be used in that analysis is 1990 and '86 is getting—is four years away from '90 and you're beginning to find minor problems in finding a relationship.

Q. Do you know what a regression analysis is?

A. Yes, I do.

Q. Doesn't a regression analysis measure correlation between statistical data?

A. It measures a relationship between variables, yes.

Q. Don't you have to do two data points to do a [120] regression analysis?

[120] A. Yes.

Q. Didn't you only have one data point with the 1990 statewide race results?

A. No.

Q. That is for every district that you analyzed you only had the 1990 results, right?

A. I had the 1990 returns and the 1990 BVAP by precincts for each House district.

Q. But you only had one race for each House district with the exception of House District 12 in 1988. You had one snapshot election, right?

A. I'm sorry, I don't follow what you're saying at all.

Q. You had one—you had one set of election data, that is the 1990 results for the House districts, right?

A. That's right.

* * * *

[148] Q. Did you have a list of all black candidates in the 1990 elections?

A. I had a list of those who were incumbent.

Q. But no black candidates?

A. Other than those?

Q. Yes.

A. Not that I was aware of.

Q. So you don't know how many races black candidates lost in 1990?

A. For what?

Q. For House or Senate seat?

A. No, I don't.

Q. You don't know how many blacks attempted to become the nominee of either political party in the primary system, did you?

A. No, I didn't look at the primary system.

Q. You don't know what extent blacks tried to become a candidate in the primary system and were not successful in doing so?

[149] A. I don't follow that question.

Q. You don't know how many occasions that blacks attempted to go through the primary and to become a successful candidate for either major party and were unable to do so?

A. No, I don't.

* * * *

[207] REDIRECT EXAMINATION

By Mr. Gilliam:

Q. Dr. Henderson, you testified earlier that District 20 should be included in Hamilton County; is that correct?

A. Yes.

Q. And does Deposition Exhibit 19, does that include District 20 in Hamilton County?

A. Yes, it does.

Q. And what does the inclusion of District 20 in Hamilton show?

A. It shows that in old District 20 one of the four segments that it was divided into had a population that was more than 10 percent black and which was carried by the Democratic candidate and that segment was moved into a district under the adopted plan that was—that had a population that was more than 10 percent black and that would also be expected to vote [208] Democratic. The remaining three segments had populations that were less than 10 percent black. They voted Republican and they were moved into three districts which similarly all had populations that were less than 10 percent black and were expected to vote, two of which were expected to vote Republican, one of which was expected to vote Democratic.

Q. You testified that concerning the matter of reduction of districts in which there were 10 percent black population or more, in other words, that you were asked questions about whether or not the districts which contain 10 percent black population or more were reduced, you were asked as to whether or not that would make any difference to you.

If you learned that there was a conserted effort, an intentional reduction of black districts around the urban areas which contained 10 percent blacks or more, would that mean anything to you? For example, in Franklin County or Hamilton County, an increase or reduction in the number of black districts containing 10 percent or more.

A. Well, the particular manner in which that is done, which is reflected in Exhibit 14 and I think it's 17, Hamilton and Franklin County.

Q. I think it is 14 and 16.

[209] A. 14 and 16? 14 and 16 is what concerns me because the pattern that you see more often than not is that black majority districts, that is—I'm sorry, black district—districts in the new plan with black populations more than 10 percent tend to be increased which is wasting of votes and concentrated in such districts and this is both a fragmentation and a packing of black voting strength.

Q. We see, for example, in Franklin County the number of districts in which blacks are greater than 10 percent as reduced to two; is that correct?

A. That's part of it. I mean, that is very important on the face of it, but look at the size of the districts that were involved. One of them was 38 percent black, 12 percent black, 47 percent black, 27 percent black. Those are likely to have been substantially, as indeed they were as indicated on the facing page of this exhibit, strongly Democratic districts, and so now this black concentration which was spread among four districts has been collapsed largely into two and concomitantly, as a result, because of the strong relationship between the percentage of a district as a plan and the tendency of that district to vote Republican, the number of likely Republican districts has increased from three to six.

[210] Is this evidence of racial gerrymandering for partisan purposes?

A. Yes, I think it is.

Q. For partisan purposes?

A. Yes, it is.

Q. And is that true of what is shown as Exhibit 14 and Exhibit 16?

A. Yes, it is.

* * * *

[Exhibit 3 to Deposition of Gordon G. Henderson (December 12, 1991)]

Voting in the 1990 General Election for House Candidates in the 11 Districts Represented by Blacks

NOTE: Data for percent of White and Black precincts voting for a candidate are from a homogenous precinct analysis. Data for percent of White and Black voters voting for a candidate and estimates of turnout by race are from a bivariate regression analysis. The procedures used here are identical in every detail to those used by plaintiff's expert, Bernard Grofman, in *Gingles* v. *Edmisten* which in the Supreme Court became the Thornburg case.

Party of Candidates	Total Vote	in Black Precincts	from Black Voters	in White Precincts	from White Voters
District 12	13644				
Democrat	11969	94.41	94.79	66.66	63.71
Republican	1675	5.59	5.21	33.33	36.29
Turnout:	20.80% White 25.87% Black				
District 14	17959				
Democrat	16830	96.65	97.83	57.55	51.65
Republican	1129	3.35	2.17	42.45	48.35
Turnout:	22.51% White 28.33% White				
District 16	23153				
Democrat	21584	93.87	94.36	68.34	67.55
Republican	1569	6.13	5.64	31.66	32.45
Turnout:	26.11% White 34.30% Black				
District 23	20135				
Democrat	14190	94.70	101.09	57.23	50.66
Republican	5945	5.30	−1.09	42.77	49.34
Turnout:	28.23% White 12.63% Black				
District 25	29381				
Democrat	21556	94.55	98.83	50.93	50.93
Republican	7825	5.45	1.17	49.07	49.07
Turnout:	41.02% White 36.10% Black				

Party of Candidates		Total Vote	in Black Pre-cincts	from Black Voters	in White Pre-cincts	from White Voters
District 29		22985				
Democrat		15683	94.24	103.42	51.00	44.50
Republican		7302	5.76	−3.42	49.00	55.50
Turnout:	28.16%	White				
	34.36%	Black				
District 31		23084				
Democrat		16635	95.46	102.17	53.08	50.25
Republican		6449	4.54	−2.17	46.92	49.75
Turnout:	33.05%	White				
	31.30%	Black				
District 36		28162				
Democrat		18129	97.69	101.35	36.57	35.44
Republican		10033	2.31	−1.35	63.43	64.56
Turnout:	31.13%	White				
	36.33%	Black				
District 37		23835				
Democrat		15406	94.55	101.39	47.70	45.98
Republican		8429	5.45	−1.39	52.30	54.02
Turnout:	29.26%	White				
	30.05%	Black				
District 42		29381				
Democrat		19238	95.69	109.63	48.79	48.76
Republican		10143	4.31	−9.63	51.21	51.24
Turnout:	40.22%	White				
	31.38%	Black				
District 45		21501				
Democrat		15536	92.78	97.62	45.41	44.46
Republican		5965	7.22	2.38	44.59	45.54
Turnout:	26.60%	White				
	29.53%	Black				

Distribution of Democratic Partisanship Index
in Republican 1991 Plan

Range in Value of Index	Number of Districts with Index Values in that range
>75	7
65-74.9	7
55-64.9	13
45-54.9	37
35-44.9	35
25-34.9	0
<25	0

[Exhibit 4 to Deposition of Gordon G. Henderson (December 12, 1991)]

Vote in Districts in which the Black Percent of the Total population was 10 percent or more for the Winning Democratic Candidate for the Ohio House of Representatives in the 1990 General Election.

House District Number	Black % of Total Population	Winning Democratic Candidate	Vote of Winning Candidate	Winning Candidate's % of Vote
12	74.80	Troy Lee James	12897	86.69
14	90.07	C J Prentiss	17845	88.61
15	34.91	Jane L. Campbell	23079	77.18
16	94.63	Vermel M. Whalen	22952	92.82
17	26.02	Suzanne M. Bergansky	25571	73.80
18	14.72	Judy B. Sheerer	28956	73.96
19	14.36	Ronald Suster	20761	58.41
23	45.92	William L. Mallory	14190	70.47
24	32.26	Terry M. Tranter	18863	67.54
25	53.19	Helen Rankin	21556	73.37
29	38.49	Ray Miller	16762	67.91
30	12.42	Mike Stinziano	15139	70.83
31	46.79	Otto Beatty, Jr.	17908	71.55
32	26.61	Dean Conley	17641	63.07
36	42.07	Rhine L. McLin	19488	64.88
37	36.13	Tom Roberts	16389	64.48
42	35.39	Vernon Sykes	19235	65.49
45	41.72	Casey Jones	17268	67.12
47	13.23	Barney Quilter	15444	76.04
50	14.88	William J. Healy	18590	58.08
52	10.48	Joseph J. Vukovich	31289	79.51
53	27.78	Robert F. Hagan	26465	81.07
59	12.82	Michael G. Verich	23044	76.31
62	11.35	David Hartley	15494	53.52

Vote for the Democratic Candidate for the Ohio House of Representatives in the 1988 General Election in Districts in which the Black Percent of the Total population was 10 percent or more.

House District Number	Black % of Total Population	Winning Democratic Candidate	Vote of Winning Candidate	Winning Candidate's % of Vote
12	74.80	Troy Lee James	18818	88.86
14	90.07	Ike Thompson	26074	100.00
15	34.91	Jane L. Campbell	31249	81.56
16	94.63	Vernell M. Whalen	26243	100.00
17	26.02	Suzanne M. Bergansky	32451	74.02
18	14.72	Judy B. Sheerer	37009	100.00
23	45.92	William L. Malory	19969	68.46
24	32.26	Terry M. Tranter	24059	65.14
25	53.19	Helen Rankin	30149	76.98
29	38.49	Ray Miller	20891	71.07
30	12.42	Mike Stinziano	19379	69.89
31	46.79	Otto Beatty, Jr.	23425	74.16
45	41.72	Casey Jones	25546	75.74
47	13.23	Barney Quilter	23284	100.00
52	10.48	Joseph J. Vukovich	38260	100.00
53	27.78	Robert F. Hagan	33582	100.00
59	12.82	Michael G. Verich	31754	100.00

Vote in Districts in which the Black Percent of the Total population was 10 percent or more for the Winning Democratic Candidate for the Ohio House of Representatives in the 1986 General Election

House District Number	Black % of Total Population	Winning Democratic Candidate	Vote of Winning Candidate	Winning Candidate's % of Vote
12	74.80	Troy Lee James	13648	89.27
14	90.07	Ike Thompson	16603	83.13
15	34.91	Jane L. Campbell	22442	100.00
16	94.63	Vermel M. Whalen	18019	100.00
17	26.02	Leroy D. Peterson	21931	70.58
18	14.72	Judy B. Sheerer	28307	100.00
19	14.36	Ronald Suster	23460	76.30
23	45.92	William L. Mallory	13179	69.57
24	32.26	Terry M. Tranter	17437	64.71
25	53.19	Helen Rankin	19773	69.99
29	38.49	Ray Miller	16941	70.14
30	12.42	Mike Stinziano	14298	69.09
31	46.79	Otto Beatty, Jr.	18823	71.85
32	26.61	Dean Conley	16738	62.77
36	42.07	C. J. McLin	19630	70.38
37	36.13	Tom Roberts	16648	63.94
42	35.39	Vernon Sykes	18927	65.51
45	41.72	Casey Jones	17676	73.31
47	13.23	Barney Quilter	14888	100.00
50	14.88	William J. Healy	16491	51.94
52	10.48	Joseph J. Vukovich	28535	100.00
53	27.78	Robert F. Hagan	20912	62.56
59	12.82	Michael G. Verich	23969	100.00
62	11.35	David Hartley	16110	55.94

Vote in Districts in which the Black Percent of the Total population was 10 percent or more for the Winning Democratic Candidate for the Ohio House of Representatives in the 1984 General Election.

House District Number	Black % of Total Population	Winning Democratic Candidate	Vote of Winning Candidate	Winning Candidate's % of Vote
12	74.80	Troy Lee James	23025	88.54
14	90.07	Ike Thompson	31653	94.02
15	34.91	Jane L. Campbell	31010	74.83
16	94.63	John D. Thompson	30785	91.38
17	26.02	Leroy D. Peterson	29457	69.03
18	14.72	Judy B. Sheerer	31242	66.27
19	14.36	Donald Suster	31879	74.98
23	45.92	William L. Mallory	23951	70.94
24	32.26	Terry M. Tranter	23562	58.28
25	53.19	Helen Rankin	29674	66.03
29	38.49	Ray Miller	21366	63.59
30	12.42	Mike Stinziano	20445	65.08
31	46.79	Otto Beatty, Jr.	25313	67.81
32	26.61	Dean Conley	20275	58.14
36	42.07	C. J. McLin	26359	63.23
37	36.13	Edward J. Orlett	23968	66.10
42	35.39	Vernon Sykes	30204	69.54
45	41.72	Casey Jones	26998	68.86
47	13.23	Barney Quilter	23860	73.75
50	14.88	William J. Healy	28991	66.30
52	10.48	Joseph J. Vukovich	37432	76.66
53	27.78	Thomas P. Gilmartin	35783	100.00
59	12.82	Michael G. Verich	31988	76.57
62	11.35	David Hartley	22674	56.73

[Exhibit 5 to Deposition of Gordon G. Henderson
(December 12, 1991)]

FRANKLIN COUNTY

District 29—Ray Miller's District (6 terms)

	1990	1988	1986	1984	1982
Democrat	16,762	20,891	16,941	21,366	19,227
Republican	7,922	9,204	7,212	12,232	10,155

District 31—Otto Beatty's District (7 terms)

	1990	1988	1986	1984	1982
Democrat	17,908	23,425	18,823	25,313	22,360
Republican	7,120	8,163	7,374	12,017	9,400

HAMILTON COUNTY

District 23—William Mallory's District (13 terms)

	1990	1988	1986	1984	1982
Democrat	14,190	19,969	13,179	23,951	15,068
Republican	5,945	9,198	5,765	9,812	6,632
Libertarian					594

District 25—Helen Rankin's District (8 terms)

	1990	1988	1986	1984	1982
Democrat	21,556	30,149	19,773	29,674	20,688
Republican	7,825	-0-*	8,477	15,263	11,191
Candidate Ahrens		9,016			
Libertarian					620

CUYAHOGA COUNTY

District 12—Troy Lee James' District (13 terms)

	1990	1988	1986	1984	1982
Democrat	12,897	18,818	13,648	23,025	19,360
Republican	1,905	2,360	1,640	2,981	2,303
Write In	75				

* No Candidate

District 14—C.J. Prentiss' District (1st term)

	1990	1988	1986	1984	1982
Democrat	17,845	26,074 (Dee Thompson)	16,603 (Ike Thompson)	31,653	20,877
Republican	1,356	-0-*	1,094(R?)	2,015	972
Independent	938				
Candidate Tasin			2,275		
Candidate Allmond					1,107
Candidate Britt					640
Candidate Head					2,583

District 16—Vermel Whalen's District (4 terms)

	1990	1988	1986	1984	1982
Democrat	22,952	26,243	18,019	30,785 (John Thomson)	27,954
Republican	1,776	-0-*	-0-	2,905	1,367

* No Candidate

LUCAS COUNTY

District 45—Casey Jones' District (12 terms)

	1990	1988	1986	1984	1982
Democrat	17,268	25,546	17,676	26,998	22,264
Republican	6,706	8,181	5,690(R?)	9,745	6,484
Independent	1,753				
Candidate McCloud			1,079		
Candidate Friedman				2,462	

SUMMIT COUNTY

District 42—Vernon Sykes' District (5 terms)

	1990	1988	1986	1984	1982
Democrat	19,235	23,697	18,927	30,204	20,227 (Pete Crossland)
Republican	10,135	15,588	9,966	13,227	11,115

MONTGOMERY COUNTY

District 36—Rhine McLin's District (2 terms)

	1990	1988	1986	1984	1982
Democrat	19,488	27,974 (C.J. McLin)	19,630	26,359	21,973
Republican	10,548	-0-*	8,260	15,331	8,653
Candidate Moore		10,164			

District 37—Tom Roberts' District (4 terms)

	1990	1988	1986	1984	1982
Democrat	16,389	15,829	16,648	23,968 (Edward Orlett)	19,675
Republican	9,030	-0-*	9,391	12,294	8,240
Libertarian					672

* No Candidate

[Exhibit 6 to Deposition of Gordon G. Henderson (December 12, 1991)]

Districts with 1991 Populations Within 5% of Norm:
Largest Segment of Population of Old District
Remaining in Same District in Republican Plan

Repub or Demo Leaning	House District in 1980 Plan	Repub or Demo Leaning	Chan	Number of New Districts Old District Put in	Total Population 1990
D	3	D	N	1	108276
	7	D	Y	2	80484
	10	D	Y	3	75703
	13	D	Y	4	37507
	17	D	Y	3	44686
	29	D	Y	5	56292
	32	D	Y	4	48228
	37	D	Y	3	53931
	39	D	Y	5	36243
	41	D	Y	3	50561
	42	D	Y	4	54760
	43	D	Y	2	58254
	45	D	Y	3	61414
	46	D	Y	4	71318
	49	D	Y	3	56268
	50	D	Y	2	86732
	54	D	Y	2	77677
	62	D	Y	2	78828
	67	D	Y	2	94950
	69	D	Y	3	49468
	85	D	Y	2	102589
	89	D	Y	2	80327
	91	D	Y	3	57090
	94	D	Y	3	53941
	95	D	Y	2	68276
	97	D	Y	3	71886
Sum					1715689
Means					65988
R	1	R	N	1	109755
	5	R	N	1	113269
	6	R	Y	2	106960

Repub or Demo Leaning	House District in 1980 Plan	Repub or Demo Leaning	Chan	Number of New Districts Old District Put in	Total Population 1990
	22	R	Y	4	89196
	44	R	Y	5	57119
	61	R	Y	2	91674
	65	R	Y	2	106118
	68	R	Y	3	72159
	74	R	Y	3	93244
	75	R	Y	4	34161
	76	R	Y	3	83783
	79	R	N	1	114784
R	80	R	N	1	113879
	81	R	Y	2	71272
	82	R	N	1	114875
	90	R	Y	3	47870
	93	R	Y	2	101442
	96	R	Y	3	71505
Sum					1593065
Means					88504
Sum					3308754
Means					75199

[Exhibit 7 to Deposition of Gordon G. Henderson (December 12, 1991)]

Noting Treatment Under the 1991 Republican Plan of Major Segments of all 44 Districts in the 1981 Plan that had Potential to be used Intact as Districts Under a New Plan sorted according to (1) their Partisan Leaning and (2) the Percent of their Population Below and Above 10% Black

(N=44)

Democratic Leaning Districts		65,988
1981 Districts with Black Population of Less Than 10%:		
Mean population of largest segment of old District moved Intact into 1991 Plan (N=18)	68,379	
1981 Districts with Black population of More Than 10%:		
Mean population of largest segment of old District moved Intact into 1991 Plan (N=8)	60,609	
Republican Leaning Districts		88,504
1981 Districts with Black population of Less Than 10%:		
Mean population of largest segment of old District moved Intact into 1991 Plan (N=15)	89,133	
1981 Districts with Black population of More than 10%:		
Mean population of largest segment of old District moved Intact into 1991 Plan (N=3)	85,357	

[Exhibit 9 to Deposition of Gordon G. Henderson (December 12, 1991)]

Vote for Democratic House Candidate in 1990 in Districts in 1981 Districting Plan that are 10 percent or more Black in Population
(N=27)

Black % of Population	Number of Districts	District Numbers	% of 1990 vote Won by Democratic House Candidate		Mean Vote for Democratic House Candidate
>90	2	14, 15	93.71	93.22	93.47
50-89	2	12, 15	88.29	73.37	80.83
40-49	4	23, 31	70.47	72.06	69.57
		36, 45	64.38	72.26	
30-39	5	15, 24	77.79	67.54	68.74
		29, 37	68.25	64.63	
		42		65.48	
20-29	3	17, 32	75.73	63.28	73.44
		53		81.31	
10-19	11	1, 18	31.58	74.61	79.74
		19, 22	58.27	43.11	
		27, 30	34.35	71.04	
		47, 50	76.06	58.47	
		52, 59	79.64	76.31	
		62		53.52	

[Exhibit 10 to Deposition of Gordon G. Henderson (December 12, 1991)]

Republican- and Democratic-leaning districts compared—how districts in which either Republican or Democratic candidate for the House in 1990 won 67.5% or more of the vote were treated in the 1991 Republican plan

Number of such districts won by Democratic in 1990		31
Mean number of pieces these districts were divided into in Republican plan		3.5
Mean number of pieces when Black population was less than 10%	2.79	
Mean number of pieces when Black population was more than 10%	3.92	
Number of such districts won by Republican in 1990		13
Mean number of pieces these districts were divided into in Republican plan		2.6
Mean number of pieces when Black population was less than 10%	2.46	
Mean number of pieces when Black population was more than 10%	3.33	

[Exhibit 12 to Deposition of Gordon G. Henderson (December 12, 1991)]

Vote for Democratic House Candidate in 1990 in Districts in Republican Plan that are 10 percent or more Black in Population (N=20)

Black % of Population	Number of Districts	District Numbers	% of 1990 vote Won by Democratic House Candidate		Mean Vote for Democratic House Candidate
>65	4	8, 9	83.02	84.21	86.79
		10, 12	88.93	91.00	
50-64	5	21, 30	83.73	80.76	82.66
		31, 38	74.10	90.12	
		49		84.59	
40-49	3	11, 22	82.89	75.34	77.68
		44		74.81	
30-39	2	39, 64	69.88	88.28	79.08
20-29	1	32		43.35	43.35
10-19	5	1, 54	31.58	64.59	59.79
		61, 66	77.09	74.87	
		73		50.82	

[Exhibit 14 (part-page A) to Deposition of Gordon G. Henderson (December 12, 1991)]

Packing and Cracking of Black Voting Strength in Franklin County in the 1991 Republican Plan

#28	5.88% B	38.54% D
1943	14.51%	65.53%
40485	10.69%	37.57%
56978	3.15%	37.16%
16963	2.56%	43.92%
#29	38.49% B	68.23% D
56292	60.17%	83.19%
6339	17.75%	54.82%
25951	11.48%	51.39%
11739	19.71	52.08%
6275	11.73%	59.43%
#30	12.42% B	71.04% D
15033	20.05%	80.26%
8853	30.79%	79.78%
62388	11.38%	74.90%
9919	4.26%	72.20%
16294	8.84%	63.71%
6497	1.19%	55.00%
#31	46.79% B	72.06% D
35282	63.67%	85.26%
41561	53.53%	76.02%
744	3.49%	58.08%
16088	5.00	49.43%
4089	5.01	67.69%
#32	26.61% B	63.28% D
48228	50.44%	77.95%
10992	7.08%	55.63%
38298	6.80%	50.03%
13543	13.60%	52.67%
#33	4.12% B	61.42% D
37363	3.22%	68.07%
6078	2.30%	58.19%
44126	6.35%	57.59%
27548	2.16%	57.08%
#34	5.07% B	27.86% D
63932	2.78%	24.99%
55701	6.60%	30.15%
18319	8.44%	32.88%
#35	1.43% B	26.21% D
29902	2.04%	29.19%
34057	.25%	22.69%
58333	1.21%	27.99

#21	55.67% B	83.73% D
56292	60.17%	83.19%
15033	20.05%	80.26%
35282	63.67%	85.26%
#22	48.03% B	75.34% D
6339	17.75%	54.82%
8853	30.79%	79.78%
41561	53.53%	76.02%
48228	50.44%	77.95%
#23	8.28% B	69.74% D
1943	14.51%	65.53%
62388	11.38%	74.90%
744	3.49%	58.08%
10992	7.08%	55.63%
37363	3.22%	68.07%
#24	4.18% B	33.84% D
38298	6.80%	50.03%
6078	2.30%	58.19%
63932	2.78%	24.99%
#25	8.36% B	40.27% D
25951	11.48%	51.39%
16088	5.00%	49.43%
13543	13.60%	52.67%
55701	6.60%	30.15%
#26	8.54% B	33.57% D
40485	10.69%	37.57%
11739	19.71%	52.08%
18319	8.44%	32.88%
35310	2.42%	25.44%
#27	3.52% B	38.54% D
56978	3.15%	37.16%
6275	11.73%	59.43%
9919	4.26%	72.20%
4089	5.01%	67.69%
29902	2.04%	29.19%
#28	4.28% B	39.72% D
16963	2.56%	43.92%
16294	8.84%	63.71%
44126	6.35%	57.59%
34057	.25%	22.69%
#29	3.70% B	40.87% D
6497	1.19%	55.00%
27548	2.16%	57.08%
58333	1.21%	27.99%
17671	15.24%	61.04%

[Exhibit 15 to Deposition of Gordon G. Henderson (December 12, 1991)]

Explanation of layout on Data Organized by County:

All data on these documents in the left-hand list of data are for districts in the 1981 Plan. Data in the right-hand list of data are for districts in the 1991 Republican Plan.

Look at the first entry of data for a district in the left-hand column of the page. The data listed on one document for District 21 in Hamilton County is as follows:

#21	7.50% B	59.70% D
4722	69.44%	79.38%
87016	4.63%	50.50%
7727	1.98%	46.41%

Those data say that under the 1981 plan, District #21 had a population that was 7.50% Black. Voters in District #21 gave 59.70% of the vote to the Democratic candidate for the House in the 1990 election. The next three lines provide the following data for each of the three pieces into which old District #21 was divided under the Republican 1991 Plan: (1) total Black population in the piece; (2) percent of the total population of that piece that is Black; and (3) the percent of the total vote in that piece won by the Democratic candidate for District #21 in 1990.

Now look at the first entry in the right-hand column which provides data for new District #30 in the Republican 1991 Plan. These data say first that new District #30 has a population that is 60.89% Black and that if the election for the House in 1990 had been held in this new district, the Democratic candidate would have received 80.76% of the vote. Under the 1991 Republican plan, District #30 was assembled from pieces removed from three old districts. The first of these pieces had a total population of 17335 persons, 16.80% of whom were

Black. Voters in this piece of the old House District gave 63.93% of the vote to the Democratic House candidate in 1990.

Legend Explaining Colors:

Yellow—population 10% or more Black

Orange—Democratic House candidate won in 1990

Green—population less than 10% Black

Blue—Republican House candidate won in 1990

[Exhibit 17 (part—page 1) to Deposition of Gordon G. Henderson (December 12, 1991)]

AVERAGE
MINORITY INTEREST INDEX
SCORES

Pct Black	Dem	Rep	Total
0-5	94.1	62.0	77.6
5-10	96.1	70.4	86.5
10-15	95.2	66.1	87.2
15-35	94.8	—	94.8
35-100	97.6	—	97.6
TOTAL	95.3	64.3	83.1

INDEX:

49 Votes of Concern to Minority Community

[Exhibit 19 to Deposition of Gordon G. Henderson (December 12, 1991)]

Packing and Cracking of Black Voting Strength in Hamilton County in the 1991 Republican Plan

Districts in the 1981 Plan

#21	7.50%	B	59.70%	D
4722	69.44%		79.38%	
87016	4.63%		60.50%	
7727	1.98%		46.41%	
#22	12.62%	B	43.11%	D
1335	57.75%		70.89%	
13604	34.61%		56.38%	
3991	8.37%		34.73%	
89196	8.78%		41.09%	
#23	45.92	B	70.47%	D
17335	16.80%		63.93%	
67264	55.54%		75.27%	
4966	55.58%		72.21%	
3253	19.49%		63.55%	
4811	24.26%		48.56%	
#24	32.26%	B	67.54%	D
23823	66.75%		85.11%	
11389	65.76%		73.11%	
14768	54.92%		71.34%	
29130	4.88%		57.74%	
23679	1.01%		56.87%	
#25	53.19%	B	73.37%	D
64031	70.59%		83.10%	
6102	83.05%		91.38%	
4192	20.78%		59.63%	
5707	16.96%		58.73%	
19733	4.88%		50.31%	
#26	2.72%	B	24.78%	D
1349	63.90%		67.80%	
6646	4.74%		22.92%	
1491	5.70%		33.83%	
39906	1.93%		22.67%	
69846	1.73%		25.39%	
#27	12.20%	B	34.25%	D
69406	17.03%		37.57%	
15341	11.32%		31.64%	
31664	2.03%		29.47%	

Districts in the 1991 Plan

#30	60.89%	B	80.76%	D
17335	16.80%		63.93%	
23823	66.75%		85.11%	
64031	70.59%		83.10%	
1349	63.90%		67.80%	
#31	59.64%	B	74.10%	D
13802	61.04%		57.62%	
4722	69.44%		79.38%	
1335	57.75%		70.89%	
67264	55.54%		75.27%	
11389	65.76%		73.11%	
6102	83.05%		91.38%	
#32	23.89%	B	43.35%	D
13604	34.61%		56.38%	
14768	54.92%		71.34%	
6646	4.74%		22.92%	
69406	17.03%		37.57%	
#33	8.01%	B	56.47%	D
16408	8.50%		37.94%	
87016	4.63%		60.50%	
4966	55.58%		72.21%	
4192	20.78%		59.63%	
1491	5.70%		33.83%	
#34	2.60%	B	39.81%	D
89927	1.24%		39.24%	
7727	1.98%		46.41%	
3991	8.37%		34.73%	
3253	19.49%		63.55%	
#35	8.92%	B	39.42%	D
2665	.00%		33.98%	
89196	8.78%		41.09%	
15341	11.32%		31.64%	
#36	4.05%	B	35.81%	D
4811	24.26%		48.56%	
29130	4.88%		57.74%	
5707	16.96%		58.37%	
39906	1.93%		22.67%	
31664	2.03%		29.47%	
#37	2.13%	B	34.50%	D
23679	1.01%		56.87%	
19733	4.88%		50.31%	
69846	1.73%		25.39%	

Exhibit 20 (part-pages 1-21) to Deposition of Robert R. Dykes
[Docket #111]

INCREASE OF HOUSE DISTRICTS IN URBAN AREAS WITH LESS THAN OR EQUAL TO 8.5% BLACK POPULATION UNDER 1991 PLAN

1981 House Districts Black Pop. 8.5%			1991 House Districts Black Pop. 3.5%		
#	County	% Black	#	County	% Black
21	Hamilton	7.5	26	Franklin	8.5
40	Montgomery	6.2	25	Franklin	8.4
70*	Lucas	6.0	23	Franklin	8.3
28	Franklin	5.9	33	Hamilton	8.0
46	Lucas	5.3	14	Cuyahoga	7.9
34	Franklin	5.1	47	Summit	6.2
13	Cuyahoga	5.0	45	Summit	6.0
39	Montgomery	4.7	53*	Lucas	6.0
11	Cuyahoga	4.4	52	Lucas	5.6
9	Cuyahoga	4.1	50	Lucas	5.4
33	Franklin	4.1	36	Hamilton	4.5
43	Summit	2.9	19	Cuyahoga	4.5
48	Lucas	2.8	28	Franklin	4.3
26	Hamilton	2.7	24	Franklin	4.2
7	Cuyahoga	2.4	43*	Montgomery	3.8
41	Summit	2.3	29*	Franklin	3.7
8	Cuyahoga	2.1	27	Franklin	3.5
68*	Montgomery	1.6	40	Montgomery	3.3
35	Franklin	1.4	15*	Cuyahoga	3.2
38	Montgomery	0.9	42	Montgomery	2.8
10	Cuyahoga	0.6	13	Cuyahoga	2.6
6	Cuyahoga	0.5	17	Cuyahoga	2.6
			51	Lucas	2.4
			34	Hamilton	2.1
			37	Hamilton	2.1
			18	Cuyahoga	1.4
			46	Summit	1.3
			41	Montgomery	1.3
			48*	Summit	0.6
			16	Cuyahoga	0.5
			20	Cuyahoga	0.3
TOTAL 22			TOTAL 31		

* Only partly in County listed

REDUCTION OF HOUSE DISTRICTS IN URBAN AREAS
WITH A 10-50% BLACK POPULATION
UNDER 1991 PLAN

1981 House Districts Black Pop. 10%-49%			1991 House Districts Black Pop. 10%-49%		
#	County	% Black	#	County	% Black
31	Franklin	46.8	22	Franklin	48.0
23	Hamilton	45.9	44	Summit	43.0
36	Montgomery	42.1	11	Cuyahoga	42.8
45	Lucas	41.7	64	Mahnoning	35.1
29	Franklin	38.5	39	Montgomery	32.2
37	Montgomery	36.1	32	Hamilton	23.9
42	Summit	35.2	61	Lorain	15.5
15	Cuyahoga	34.9	54	Stark	15.0
24	Hamilton	32.3	66	Trumbull	11.9
53	Mahoning	27.8	73	Clark	11.8
32	Franklin	26.6	1	Allen	11.1
17	Cuyahoga	26.0	TOTAL 11		
50	Stark	14.9			
18	Cuyahoga	14.7			
19	Cuyahoga	14.4			
47	Lucas	13.2			
59	Trumbull	12.8			
22	Hamilton	12.6			
30	Franklin	12.4			
27	Hamilton	12.2			
62	Clark	11.3			
1	Allen	11.1			
52	Mahoning	10.5			
TOTAL 23					

PERCENTAGE POPULATION OF HOUSE DISTRICTS WITH MINORITY REPRESENTATIVES

Current State Representative	1981 House District Number	1981 Percent Black Population	1991 House District Number	1991 Percent Black	Percentage Change
Troy James	12	74.8%	10	67.0%	−7.8
C. J. Prentiss	14	90.1%	8	65.4%	−24.5
Vermel Whalen	16	94.6%	12	67.0%	−27.6
William Mallory	23	45.9%	31	59.6%	+13.8
Helen Rankin	25	53.2%	30	60.9%	+7.7
Ray Miller	29	38.5%	21	55.7%	+17.2
Otto Beatty	31	46.8%	22	48.0%	+1.2
Rhine McLin	36	42.1%	38	54.6%	+12.5
Tom Roberts	37	36.1%	39	32.2%	−3.9
Vernon Sykes	42	35.2%	44	43.0%	+7.6
Casey Jones	45	41.7%	49	50.6%	+8.3

INCREASE OF HOUSE DISTRICTS IN URBAN AREAS WITH A 50% OR GREATER BLACK POPULATION UNDER 1991 PLAN

1981 House Districts Black Pop. > 50%			1991 House Districts Black Pop. > 50%		
#	County	% Black	#	County	% Black
16	Cuyahoga	94.6	10	Cuyahoga	67.0
14	Cuyahoga	90.1	12	Cuyahoga	67.0
12	Cuyahoga	74.8	8	Cuyahoga	65.4
25	Hamilton	53.2	9	Cuyahoga	62.0
			30	Hamilton	60.9
			31	Hamilton	59.6
			21	Franklin	55.7
			38	Montgomery	54.6
			49	Lucas	50.6
TOTAL 4			TOTAL 9		

SUPPORTING DOCUMENTATION FOR PERCENTAGE POPULATION CHARTS

FRANKLIN COUNTY

1981 Districts		1991 Districts	
#	% Black	#	% Black
28	5.9	21	55.7
29	38.5	22	48.0
30	12.4	23	8.3
31	46.8	24	4.2
32	26.6	25	8.4
33	4.1	26	8.5
34	5.1	27	3.5
35	1.4	28	4.3
		29 *	3.7

Closest Correspondence of Districts 29 and 31

29-21
31-22

* Only partly in Franklin County

SUMMIT COUNTY

1981 Districts		1991 Districts	
#	% Black	#	% Black
41	2.3	44	43.0
42	35.2	45	6.0
43	2.9	46	1.3
44	9.0	47	6.2
69 *	9.0	48 *	0.6

Closest Correspondence of District 42

42-44

* Only partly in Summit County

HAMILTON COUNTY

1981 Districts		1991 Districts	
#	% Black	#	% Black
20	8.9	30	60.9
21	7.5	31	59.6
22	12.6	32	23.9
23	45.9	33	8.0
24	32.3	34	2.1
25	53.2	35	8.9
26	2.7	36	4.5
27	12.2	37	2.1

Closest Correspondence of Districts 23 and 25

23-31
25-30

LUCAS COUNTY

1981 Districts		1991 Districts	
#	% Black	#	% Black
45	41.7	49	50.6
46	5.3	50	5.4
47	13.2	51	2.4
48	8.8	52	5.6
70 *	6.0	53 *	6.0

Closest Correspondence of District 45

45-49

*Only partly in Lucas County

MONTGOMERY COUNTY

1981 Districts		1991 Districts	
#	% Black	#	% Black
36	42.1	38	54.6
37	36.1	39	32.2
38	0.9	40	3.3
39	4.7	41	1.3
40	6.2	42	2.8
68 *	1.6	43*	3.8

Closest Correspondence of Districts 36 and 37

36-38
37-39

* Only partly in Montgomery County

CUYAHOGA COUNTY

1981 Districts		1991 Districts	
#	% Black	#	% Black
6	0.5	8	65.4
7	2.4	9	62.0
8	2.1	10	67.0
9	4.1	11	42.8
10	0.6	12	67.0
11	4.4	13	2.6
12	74.8	14	7.9
13	5.0	15 *	3.2
14	90.1	16	0.5
15	34.9	17	2.6
16	94.6	18	1.4
17	26.0	19	4.5
18	14.7	20	0.3
19	14.4		

Closest Correspondence of Districts 12, 14, 15, 16

12-10
14-08
15-09
16-12

* Only partly in Cuyahoga County

1981 HOUSE DISTRICTS WHICH QUALIFY FOR RETENTION UNDER SECTION 7(D) BECAUSE THE 1990 POPULATION FIGURES SATISFY § 3 OF ARTICLE XI

1	61
3	62
5	65
6	67
7	68
10	69
13	74
17	75
22	76
29	79
32	80
37	81
39	82
41	85
42	89
43	90
44	91
45	93
46	94
49	95
50	96
54	97

1981 HOUSE DISTRICTS RETAINED IN THE 1991 PLAN WITH EXACTLY THE SAME BOUNDARIES

1981	1991
1	1
2	5
3	3
5	4
79	82
80	83
82	86

All of these are 7(D) Districts except for District 2 in 1981 and 5 in 1991 which is a whole county district created under Section 9 of Article XI.

1990 POPULATIONS OF 1981 HOUSE DISTRICT
(Counties with more than one House District)

County	Population Below 104,089	Population Between 104,089 and 115,045	Population Above 115,045
Cuyahoga	8, 9, 11, 12, 14, 15, 16, 18, 19	6, 7, 10, 13, 17	—
Hamilton	21, 23, 24, 25	22	20, 26, 27
Franklin	31	29, 32	28, 30, 33, 34, 35
Montgomery	—	37, 39, 68 *	36, 38, 40
Summit	—	41, 42, 43, 44, 69 *	—
Lucas	47, 70 *	45, 46	48
Stark	71 *	49, 50	51
Mahoning	52, 53, 71 *	—	—
Lorain	55, 72 *	54	—
Butler	—	—	56, 57
Trumbull	58, 59	74 *	—
Lake	60	61	—
Clark	—	62, 75 *	—
Portage	—	69 *	63
Richland	64	76 *	—
Greene	—	65, 75 *	—
Clermont	—	—	66, 77 *
Licking	—	67	78 *

* Districts only part of which is in the designated county

SUPPORTING DOCUMENTATION FOR
POLITICAL CHANGE IN LEGISLATIVE
DISTRICTS CHART

	DEM PI SCALE
1 = STRONGLY DEMOCRATIC	57.51+
2 = MODERATELY DEMOCRATIC	52.51-57.50
3 = MARGINAL	47.50-52.50
4 = MODERATELY REPUBLICAN	42.50-47.49
5 = STRONGLY REPUBLICAN	0-42.49

Political Change in Legislative Districts
from 1981 to 1991

Political Affiliation	1981	1991	Net Change
Strong Republican	17 Districts	20 Districts	+3 (Republican)
Moderate Republican	21 Districts (3 democrat/18 republican)	27 Districts	+6 (Republican)
Marginal	19 Districts (16 democrat/3 republican)	18 Districts	−1 (Marginal)
Moderate Democrat	17 Districts	9 Districts	−8 (Democrat)
Strong Democrat	25 Districts	25 Districts	—0—

Strong Republican = 0 to 42.49%
Moderate Republican = 42.50% to 47.49%
Marginal = 47.50% to 52.50%
Moderate Democrat = 52.51% to 57.50%
Strong Democrat = 57.51% or greater

Key—Percentage of Democratic Vote in Each Legislative District Averaged for Each of 5 Statewide Elections in 1990 (*i.e.* Governor, Auditor of State, Secretary of State, Attorney General and Treasurer)

LUCAS COUNTY

1981 Districts			1991 Districts		
#	Dem Pl Scale	Dem Pl	#	Dem Pl Scale	Dem Pl
45	1	64.99	49	1	77.64
46	1	58.23	50	1	62.28
47	1	63.47	51	4	44.81
48	4	43.40	52	3	48.94
70 *	2	55.02	53 *	2	54.52

Closest Correspondence of District 45

45→49

* Only partly in Lucas County

SUMMIT COUNTY

1981 Districts			1991 Districts		
#	Dem Pl Scale	Dem Pl	#	Dem Pl Scale	Dem Pl
41	2	54.18	44	1	72.21
42	1	58.64	45	4	44.95
43	4	46.57	46	4	43.06
44	4	46.43	47	1	59.99
69 *	2	57.32	48 *	3	51.35

Closest Correspondence of District 42

42→44

* Only partly in Franklin County

MONTGOMERY COUNTY

1981 Districts			1991 Districts		
#	Dem Pl Scale	Dem Pl	#	Dem Pl Scale	Dem Pl
36	1	64.40	38	1	75.63
37	1	62.52	39	1	64.40
38	5	36.57	40	4	45.34
39	3	51.67	41	5	40.55
40	4	47.30	42	5	39.77
68 *	5	41.60	43 *	4	43.96

Closest Correspondence of Districts 36 and 37

36→38
37→39

* Only partly in Montgomery County

FRANKLIN COUNTY

1981 Districts			1991 Districts		
#	Dem Pl Scale	Dem Pl	#	Dem Pl Scale	Dem Pl
28	4	45.41	21	1	76.50
29	1	62.97	22	1	69.35
30	2	55.14	23	3	51.92
31	1	66.33	24	5	39.77
32	1	58.02	25	4	43.50
33	4	44.49	26	5	40.56
34	5	39.00	27	4	43.91
35	5	34.27	28	5	39.95
			29 *	5	38.04

Closest Correspondence of Districts 29 and 31

29→21
31→22

* Only partly in Franklin County

HAMILTON COUNTY

1981 Districts			1991 Districts		
#	Dem Pl Scale	Dem Pl	#	Dem Pl Scale	Dem Pl
20	5	40.48	30	1	74.68
21	4	45.80	31	1	69.28
22	4	44.50	32	3	47.69
23	1	65.74	33	4	45.59
24	1	59.91	34	5	39.30
25	1	66.74	35	5	42.45
26	5	35.33	36	5	39.06
27	5	41.31	37	5	40.21

Closest Correspondence of Districts 23 and 25

23→31
25→30

CUYAHOGA COUNTY

1981 Districts			1991 Districts		
#	Dem Pl Scale	Dem Pl	#	Dem Pl Scale	Dem Pl
6	5	40.03	8	1	75.23
7	3	51.03	9	1	72.13
8	2	54.56	10	1	79.04
9	2	57.25	11	1	66.67
10	2	53.07	12	1	78.88
11	1	63.77	13	1	62.75
12	1	80.15	14	2	54.86
13	2	53.36	15 *	5	45.20
14	1	84.83	16	5	39.73
15	1	63.82	17	2	54.98
16	1	87.18	18	5	48.74
17	1	58.70	19	1	57.54
18	2	57.35	20	2	53.27
19	2	55.03			

Closest Correspondence of Districts 12, 14, 15, 16

12→10
14→08
15→09
16→12

* Only partly in Cuyahoga County

DEPOSITION OF ROBERT BENNETT
(December 13, 1991)
[Docket #107]

[12] Q. Did you ever attend any meetings with the Republican National Committee that discussed the creation of the majority minority districts?

A. Yes, I did.

* * * *

[14] Q. What legal issues with respect to the Voting Rights Act were discussed?

A. Oh, there's a number of them. I can't recall them all right now.

Q. And specifically with respect to the creation of majority minority districts what was discussed?

A. It was generally discussed that to comply with the Voting Rights Act that states would be required to look at majority minority districts and also then the issue of influence districts was also discussed.

* * * *

[23] Q. With respect to the three meetings of the Republican National Committee that you've testified to, were there any discussions about the Republican opportunities to gain seats in states across the country?

MR. DeLEONE: Object.

A. Yes.

* * * *

DEPOSITION OF DR. GARY KING
(December 13, 1991)
[Docket #121]

[27] Q. And have you done an estimate of partisan bias for the—for prior Ohio apportionment plans?

A. Yes.

Q. And have you done that for the present Ohio apportionment plan as adopted by the Ohio Apportionment Board?

[28] A. Yes.

MR. BRADEN: At this time I would like to show you a document marked Defendant's Exhibit 88.

(Exhibit marked for identification.)

Q. Are you familiar with this document?

A. Yes.

Q. Could you please explain what this document is?

A. This is a time series plot from 1968 to 1990 of the level of partisan bias in the Ohio State House.

Let me explain first what partisan bias is. Let's just take 1990, for example. If you notice the solid line of 1990, it is at about .05. And what that means is that if the Democrats and the Republicans were to split the vote, average district vote equally in 1990, which they didn't but if they were to split it equally, then the Democrats would receive approximately five percent more votes and the Republicans would receive approximately five percent fewer votes just because of the translation of votes into seats.

So that's a partisan bias in favor of the Democrats. My uncertainty about this is represented in the standard error bounds also printed on this graph, and that is the dotted lines about that solid line. And you can see that both—that since 1972 both the solid line and in most years the dotted lines all appear above [29] the zero level of partisan bias. So that means that the electoral system in the Ohio State House has been consistently

biased in favor of the Democratic Party for quite some time.

What this figure also shows is the change—the quite startling change from before 1970—starting of that change occurred before and after the 1971 redistricting plan, before the '71 districting plan there was Republican bias and after there was Democratic bias. This updates and analyzes the data that appeared in the article of mine to which we have already referred.

MR. BRADEN: At this time I would like to show you a document marked Defendant's Exhibit 89.

(Exhibit marked for identification.)

Q. Could you please describe for us—have you seen this document before?

A. Yes.

Q. Could you please describe for us what this document is and what it shows?

A. This is a similar analysis to Exhibit 88 but this time for the Ohio State Senate. What this shows is that over the entire period studied in this graph the Ohio State Senate has been biased in favor of the Republican Party. Both the line and in most but not all [30] the areas the dotted lines, that is the standard errors, appear below the zero mark. So the Republican Party in most of these years is actually benefitting by the seats/votes translation in this plan.

Actually I should probably just explain a technical point.

Q. Yes.

A. The technical point is since the Ohio Senate—since senators run in staggered terms I used overlapping, I paired the terms. And if you look closely at the bends in this curve, that is where the points were plotted, only appear at odd numbered years where elections obviously don't occur. So what I did on the last point of this graph plotted in 1989, that's—I am using both the class that ran in '88 and the class that ran in '90.

Perhaps we should also explain one other point, and that is that although the points at which the elections occur are the ones in which I estimated it, they are connected just so you can see it clearly. But obviously we have no information on the time that occurs between elections.

Q. Do you have any theory as to why this particular exhibit appears so much different than the prior exhibit? [31] A. I have a theory. It's actually quite interesting from an academic perspective since the 1971 Ohio State House redistricting plan has been so noted as, at least in my work, as such a Democratic gerrymander, that the State Senate, which are just aggregated State House districts, could be biased in favor of the Republicans.

Well, let me give you two hypothetical examples. The first hypothetical example I don't believe applies here and the second does. The first, which might seem more plausible at first, is take three House districts—and just for the record it is three House districts that get aggregated up into a Senate district—if each, if Democrats won each of the House districts by one vote and you aggregate it up to get a Senate district when the Democrat would win by three votes. And so not a single vote would be wasted, it would be just a perfect redistricting plan for the Democrats.

But that's obviously not what happened here so let me give you a different hypothetical example that I think fits. What probably happened in 1971 is that, is something akin to the following hypothetical example, and that is in two of the three districts there was—in two of the three districts the Democrats win by a [32] small margin. In the third district the Republicans win by a hundred percent. So you pack all the Republicans into the third district and win the other two by small margins.

If you aggregate that situation up then the Republican wins the seat. So if you really push the State House redistricting and try to bias it as much as you can in favor of the Democrats, I take it that's what—I take it

as an inference that was what was attempted in 1971—that if you do that then one possible logical consequence of it is bias in favor of the Republicans in the Senate. So it is interesting that Ohio because of this law, because of this provision in the Ohio State Constituton, has a sort of self-correcting mechanism.

Q. In addition to your examination of prior plans adopted by the Ohio Apportionment Board, have you had the opportunity to examine the plan adopted by the Ohio Apportionment Board, sometimes referred to in this litigation as the Tilling plan?

A. Yes.

Q. Do you have an opinion as to whether the Tilling plan could be fairly described as a partisan gerrymander?

A. Yes.

Q. And what is that opinion?

[33] A. That it really could not be described as a partisan gerrymander, either in the House or the Senate.

MR. BRADEN: At this time I would like to provide you with a document marked Defendant's Exhibit 90.

(Exhibit marked for identification.)

Q. Have you seen this document before?

A. Yes.

Q. Could you please describe for us what this document is?

A. Well, let's focus for a second on the lines in the top right-hand corner of this figure.

This figure—the solid line in this figure, all it does is replicate almost exactly the Ohio State House figure, Exhibit 88. So it just moves that line straight onto this graph, and it's only for comparison. So what is labeled current are the current districts from 1984 to 1990. Then what I did is I made predictions, as I described in my method, for 1984 to 1990 if those districts were to run again under these four plans, under the current plan

which I have already described, under the Tilling plan which is the one in question, and also under the Democratic plan and the Republican plan.

Q. Let me interject at this time. These are the [34] plans—are these the plans that were considered by the Apportionment Board, your understanding?

A. Yes.

Q. Thank you. If you could go on and explain this exhibit, please.

A. Looking—continuing to look at the lines, the current line is, as I mentioned in the previous exhibit, is always above zero. So there is consistent Democratic bias. The Democratic line is also consistently above zero, although there is obviously some variation over the four years. It also indicates Democratic bias.

The Tilling plan is sometimes below the line and sometimes above the line. On average it is about on the line. So it is—it is in fact quite a fair plan. The Republican plan is almost a mirror image of the Democratic plan. It is almost always below the line.

I wanted to describe two other features of this graph. First are the standard errors which appear in the left-hand side here, also in the figure before we get to the table. The standard errors are basically—what these lines indicate are plus or minus one standard error and this little diamond point, and that is basically how precisely we know each of these lines. You can see we know the current district lines better than the other lines because we have the data for those,[35] and we had to forecast the other lines.

A summary of this figure appears at the bottom of Exhibit 90. For each of the four plans I present, or this exhibit presents the average partisan bias across these four years, and standard error of the average, which is different than the standard error of individual points.

For the Democratic plan average partisan bias is 2.6 percent. So that means that partisan bias, Democrats are receiving approximately on average 2.6 percent addi-

tional seats over and above what I would describe as fair—if the Democratic plan were to be put into effect.

Current districts which obviously are in effect and were in effect from '84 to '90 were biased in favor of the Democratic Party also, on average by about 3.3 percent. You can see the standard errors for each of these are fairly small, and each of these are more than twice the size of the standard errors.

The Tilling plan is six-tenths—my best guess—six-tenths of a percentage point bias in favor of the Republicans, but it's not even as large as the standard error so we can not statistically distinguish this from zero bias.

The Republican plan, as I mentioned earlier, is [36] a mirror image of the Democratic plan and is biased in favor of the Republican Party by about two percentage points, and it is also statistically and substantively distinguishable from zero.

• • • •

Q. At this time, Dr. King, I would like to show [37] you a document marked Defendant's Exhibit 91.

(Exhibit marked for identification.)

Q. Have you seen that document before?

A. Yes.

Q. Would you please describe for us what that document contains?

A. This is an analogous figure consrtucted for the Ohio State House as Exhibit 90 was for the Ohio State Senate.

The current plan, which is marked C, current, in the top of the figure on the right-hand side is a solid line. And the solid line indicates, as Exhibit 89 did, that there is considerable Republican bias for the years 1984, '86, '88—excuse me, for the Senate districts which ran from '84 to '90. Again I am pairing up the pairs of years so I can get 33 districts.

I also ran it for the three other plans, Tilling plan, Democratic plan and Republican plan. I am going to first

talk about the point estimates and then I will talk about the standard errors. Point estimates are one's best estimate of these lines that appear on the right-hand side.

As I said, the current plan is considerably below the line and is biased in favor of the Republicans. The Republican line is very similar to the [38] current plan and is also considerably biased in favor of the Republicans. The Democratic plan is considerably less biased in favor of the Republicans, and the Tilling plan is also considerably less biased in favor of the Republicans. None of the plans become biased in favor of the Democrats.

Now, before interpreting each of these lines, without putting too much weight on these lines, you focus on the standard errors appearing on the left side of the graph. We're fairly certain of the first and somewhat less of the last standard errors, and the two in the middle we're fairly uncertain of, in part because these are predictions and in part because there are only 33 districts, and in part because we're pairing years. But this is the best available method one could use, at least at the present time.

This is summarized at the bottom here, and you can see the Democratic plan is the point estimate slightly biased in favor of the Republicans, but it is not even as large as the standard error so one really can't make too much of it. The current plan is significantly biased in favor of the Republicans, as is the Republican plan skipping down to the fourth line. Both are considerably larger than their standard errors.

The Tilling plan, which is the one at issue [39] here, the point estimate is that it's biased in favor of the Republicans but it is not statistically distinguishable from zero. What appeared to happen here is that the Tilling plan took the current districts and moved them so that they were—there was less bias in favor of the Republicans.

So just to compare what happened in Exhibit 90 about the Ohio State House to Exhibit 91 in the Ohio State Senate, the Tilling plan took considerable Democratic

bias in the Ohio State House and turned it in to just about exactly fairness and took considerable bias in favor of the Republican Party in the Ohio State Senate and turned it at least into a lot less Republican bias. And since I can't distinguish, statistically distinguish it from zero, we might call that at least nonascertainable zero bias. So I would conclude that this is a fair plan.

Q. Do you conclude whether or not this plan is a partisan gerrymander, Tilling plan?

A. It certainly is not a partisan gerrymander.

Q. Did you receive data on which you could make a determination on whether there was racial bloc voting in the State of Ohio?

A. Yes.

Q. What is racial bloc or racial polarized voting?

[40] A. It is what happens at the end at the individual level, voter level, if black voters vote for certain candidates more frequently than white voters do. And we would call that racially polarized voting.

Q. Did you do bivariant ecological regression analysis to determine whether there was racial bloc polarized voting in the State of Ohio?

A. Yes, I did do an ecological regression analysis.

Q. At this time I would like to show you a document marked Defendant's Exhibit 92 and hand Mr. Gilliam a copy.

(Exhibit marked for identification.)

Q. Have you seen this document before?

A. Yes.

Q. Could you please describe for us what this document is?

A. There is a key on the first few pages here which describe some of the—some of the many, many elections and districts and years we used to analyze these data. If you turn to the fourth page of the exhibit—excuse me, the fifth page of this exhibit—you can see the results.

The district, the first two columns are codes which are explained in the key in the beginning of the exhibit.

[41] The third column is what is central here, and that is the proportion of blacks who vote for Democrats minus the proportion of whites who vote for Democrats. If this is a positive number then there is some degree of racially polarized voting.

As you can see down the line here, every one of these numbers is a positive number. Some are—there are a couple of them that are fairly small, but overall they are fairly large.

There is a standard error presented in each case for these ecological regression co-efficients and you can see in most of the cases, the vast majority of the cases, the coefficient that we're interested in is considerably larger than the standard error.

Finally, if you flip to the last page of this exhibit, right at the bottom it presents an average over all these years and districts and races, and first it's just the average of that statistic that I was talking about, the average of the percent of blacks voting for the Democrat versus the average of percent, minus the proportion—this is the average of the proportion of blacks voting for Democrats minus the proportion of whites voting for Democrats. And that is about 44 percent, .441 is the statistic here.

So that means that blacks vote for Democrats [42] much more frequently than whites. The standard error is only two-tenths of a percentage point and so it's considerably smaller than the statistic, which means we can be extremely confident that there is racially polarized voting in Ohio.

Q. And this is a "retrogression analysis"?

A. Regression analysis.

Q. At this time I would like to show you a document marked Defendant's Exhibit 93.

(Exhibit marked for identification.)

Q. Have you seen this document before?

A. Yes.

Q. Could you describe what is contained in this document?

A. This is, at the beginning here is a list of the same, essentially the same key as appears in the previous exhibit, which describes the district and the race we use. This is another analysis of racial bloc—racially polarized voting.

If we turn to basically any one of these figures, since they are all—each one of these is based upon a different district, but the conclusions from I believe every single one are almost identical. The proportion of—what is plotted here in each of these figures is the proportion of the Democratic [43] average district vote. Each of the little circles in this graph is a precinct within one district. So we could flip at random to—why don't we just to make it clear take the last one—let's just take the last, the last figure here. This label, I believe it is 93-69, just as an example.

This is the code at the top, which is explained in the key. It is the State Senate race for District 9 in 1990, and the variable I am considering here for the Democratic vote proportion is for the State House. The proportion black goes across the horizontal axis.

Now, why did I do this? Well, the two methods that have been used in the past to study or in the past in court testimony in any event to study racially polarized voting are bivariant ecological regression analysis and extreme case analysis. There are other methods which I am going to describe in just a minute, but both of these methods can be seen very clearly, much more clearly in these figures than in any other format.

For example, the extreme case analysis, if you look at the proportion black, when the proportion black is all the way, very close to one or very close to zero, you can determine how individual voters, individual black voters are voting, even though we don't get to follow them into the voting booth and look over their [44] shoulder. And you can see from this figure that when the proportion in

a precinct of the people who are black—excuse me. Let me say that again.

We can see when the proportion of people in the precinct is, approaches a hundred percent blacks, then the proportion voting for the Democrats is very high. And this particular figure is 95 or 100 percent.

When the proportion or when the district is composed almost solely of white voters so that the proportion black is about zero on the left-hand side of this curve, then the Democratic vote proportion is about 55 or 60 percent. So there is very clear racial bloc voting from that extreme case analysis which you can see here.

You can also make sort of a not quite extreme case analysis by looking a little in from one or zero. Moreover, bivariant ecological regression analysis sounds like a big fancy term but really what it is is a line fit to these points. And the steeper the line, the more racially polarized voting there is. And you can see that this line, if one plotted a line to these points, the line would not be flat, the line would be steep, and therefore there is racially polarized voting.

Shall I explain one other thing I did?

Q. Yes, please do.

[45] A. These methods, first two methods, bivariant ecological regression analysis and extreme case analysis, go back to the 1950s. Social science has gotten more sophisticated since then, and there have been a variety of models proposed to study the general problem of ecological inference. Just to repeat, the general problem of ecological inference is when we only have aggregate data but we really wish to know individual data. We can't look over people's shoulders when they vote, and so absolutely determining racial bloc voting is impossible but estimating it in a scientific way is possible.

Q. So there have been methods since then. I don't have—there isn't an exhibit to the following, but another thing that I did is use what is called an aggregated compound multinomia model, recent method, I think the most

recent method proposed in the academic literature, and I have also written about it. And the conclusions are virtually the same as what I presented here.

Q. And those conclusions are?

A. That there is racially polarized voting to a significant degree in Ohio.

Q. Thank you. Have any of your analyses indicated to you that the Tilling plan, the plan adopted by the [46] Ohio Apportionment Board, dilutes black voting rights?

A. No.

* * * *

[51] Q. Can you reasonably conclude—well, first of all, is it a fact that blacks predominantly vote for Democratic candidates in the general election for House races in the State of Ohio?

A. Generally, yes.

Q. Can you reasonably conclude from the fact that blacks vote for Democratic candidates in the general election for House races in Ohio that these particular Democratic candidates are the preferred candidate of the black community?

A. Well, presumably they are preferred to the Republican candidate, but that doesn't mean that they are the preferred candidate to the black community.

Q. Why not?

* * * *

[52] A. Certainly this indicates that blacks prefer the Democratic candidate offered to them over the Republican candidate offered to them. But that doesn't mean that they prefer the Democratic candidate in an absolute sense.

Q. Why is that?

A. Well, because there is a primary election and they might have preferred some other candidate in the primary. Moreover, the candidates that they would prefer in general might not have even run for primary election.

* * * *

[53] Q. Is it a racial gerrymander or can you reasonably deduce there is a vote dilution of the black minority voting power simply because a particular apportionment plan might elect fewer white Democrats than an alternative plan?

MR. GILLIAM: Same objection.

A. No. I mean blacks support the Democratic Party over the Republican Party. That is clear. They support Democratic candidates over Republican candidates. That appears to be clear.

But does that mean that they would prefer in general Democratic candidates being—that the [54] Democratic candidates offered to them are the ones they prefer in general? No.

If you mean do these, do blacks prefer white Democrats to black Democrats, there is no evidence of that at all. The argument that blacks prefer or could do as well with white Democrats as black Democrats strikes me as the arguments people used to keep blacks in slavery, it was safe for them, it was good for them.

Moreover, there are theories of representation in the academic literature, one of which for example is descriptive representation, which even beyond political representation, it is important that people have role models in government office, according to this theory anyway. And so that would be another reason why that line of arguament would not make sense.

* * * *

[68] Q. Did you make an evaluation of 1990 elections—may I finish my question, please?

Did you make an evaluation of what the white crossover vote was in 1990 for the eleven minority representatives in the House of Representatives?

A. No.

Q. Why not?

A. Well, let me retract that answer. I believe in—let me see if it's here. 1990 in the State House of Representatives—yes.

* * * *

[69] Q. All right. Now looking at District 14, can you tell me what the white cross-over vote was in District 14?

A. From this figure, no. Since what I have is—we wanted to know whether—for the purposes of this figure I wanted to figure out the proportion of blacks voting for Democrats minus the proportion of whites voting for Democrats. And that is the percentage presented here.

* * * *

A. I could have presented—can I continue?

Q. You may.

A. I could have presented these figures separately. It just seems there is an awful lot of information here and I wanted to present it in a concise way. One can see very clearly the proportion of whites voting for Democrats is less than the proportion of blacks voting for Democrats in every single district I [70] analyzed.

Q. But you did not analyze the proportion of white cross-over vote for black candidate; is that a true statement?

A. The proportion of whites voting for black Democrats, you mean?

Q. Yes.

A. No, in fact that is actually part of this analysis which I didn't present, which I didn't present in the way that you are asking the question, but I presented it I think in a useful way.

Q. Well, how would one know from looking at what you have marked here what the proportions of whites were voting for the black incumbent in District 14?

A. All one would know is that it's less than the proportion of blacks voting for Democrats.

Q. That's all you know; isn't that right?

A. And it's considerably less. In District 14 the difference between proportion of blacks voting for Democrats in each of these races is 50 percent, 37 percent, 39 percent, 32 percent, 26 percent, 48 percent, 40 percent.

Q. And that's how you measured racial bloc voting. This document is the basis upon which you measured racial bloc voting in the State of Ohio, right?

[71] A. That is one of three analyses.

Q. Exhibit 92.

A. It is one of three ways that I studied racial quote, polarized voting.

I did look at those proportions you are asking me about. Since that was not the question that's not what I presented here.

Q. Since that was not the question?

A. That wasn't the question that I was analyzing. I wanted to know exactly this difference.

Q. Who gave you the question to analyze?

A. Counsel asked for racially polarized voting and this is what I took it to mean precisely. Blacks are voting for Democrats more than whites are voting for Democrats. So blacks prefer different candidates than whites do. It happens in every case here.

If there was ever a pattern in social science literature this is it. This is the clearest pattern one would ever find in electoral data.

* * * *

[76] Blacks vote more Democratic than they vote Republican; we're clear on that?

A. Right.

Q. By a very substantial margin, true?

A. Right.

* * * *

[95] Q. Would it be possible to design a plan that perfectly allocated to each political party its share of

seats in a legislature but which also in fact diluted minority voting strength?

A. What do you mean by perfectly allocating seats in the legislature? You mean fairly according to my terms?

Q. According to your terms.

A. Okay. So since I am not studying racial—since partisan bias doesn't include racial calculations it depends how the districts are set up. It depends where the minorities live. It is certainly conceivable.

• • • •

[97] Q. And it's your impression then that Mr. Tilling lowered the black population percentages in the districts in all of the cities in Ohio where they were concentrated; is that right?

MR. BRADEN: That's a mischaracterization of his answer. Why don't you reformulate the question so it doesn't mischaracterize his last answer.

Q. What is your impression where he lowered the black percentages, in what cities?

A. I said I don't know where. I said I didn't see that information.

Q. And you didn't see the information as to where he increased the black percentages either then; is that correct?

A. Not where, but only overall.

Q. Only overall?

A. Right.

[98] Q. You didn't look at it on an intensely local basis, did you?

A. No, I didn't.

Q. You didn't for example examine Franklin County?

A. The only detailed local analysis that I was part of was watching—I did not perform myself—just watching the presentation by Mr. Tilling.

Q. All right. Then you do not know what he did with respect to black populations in any county in Ohio, correct, any urban county?

A. That's not what I said. I said I saw—I saw some totals for the state and not attached to particular locations. So you can't ask me—it is not reasonable to say I don't know it in any particular area since—period.

Q. What was—what did the plan do in Cuyahoga County with respect to minorities?

A. I don't know the details.

Q. What did it do in Franklin County with respect to minorities?

* * * *

[99] Q. What does the plan do in Franklin County?

A. I did not study it.

Q. Hamilton County?

A. I was not asked to and didn't study it.

Q. Lucas County?

A. Same.

Q. Summit County?

A. Same.

Q. Montgomery County?

A. Same.

* * * *

[Exhibit 8 to Deposition of William W. Pfeiffer
(December 11, 1991)]
[Docket #105]

PAIRED MEMBER'S WARD AND OR PRECINCT

49th	CASEY JONES	TOLEDO WARD 8, PRECINCT H
	DON CZARCINSKI	TOLEDO WARD 4, PRECINCT F
61st	JOSEPH KOZIURA	LORAIN WARD 4, PRECINCT C
	KATHERINE WALSH	OBERLIN CITY WARD 4, PRECINCT A
48th	THOMAS SEESE	COVENTRY TWP. PRECINCT N
	CLIFF SKEEN	SPRINGFIELD TWP. B
11th	JANE CAMPBELL	CLEVELAD WARD 4, PRECINCT G
	JUDY SHEERER	SHAKER HEIGHTS N
	SUZANNE BERGANSKY	BEDFORD HEIGHTS WARD 4, PRECINCT C
65th	RON GERBERRY	AUSTINTOWN PRECINCT 5
	JOE VUKOVICH	POLAND TWP. WARD 7, PRECINCT 16
98th	JERRY KRUPINSKI	STEUBENVILLE WARD 5, PRECINCT D
	GREG DIDONATO	DENNISON PRECINCT 1

78th	MARC GUTHRIE	LICKING TWP. NORTH PRECINCT
	PAUL MECHLING	HOPEWELL WEST PRECINCT
	MARY ABEL	ATHENS WARD, 4, PRECINCT 2
23rd	MICHAEL STINZIANO	COLUMBUS WARD 40, PRECINCT G
	RICHARD CORDRAY	JACKSON TWP., PRECINCT B
92nd	VERN RIFFE	PORTER TWP., PRECINCT J
	MARK MALONE	SOUTH POINT 2, PERRY TWP.

DEPOSITION OF GOVERNOR GEORGE V. VOINOVICH
(December 16, 1991)
[Docket #128]

[8] Q. All right. My question, what I'm trying to get at is whether or not you had any personal understanding of what the Constitution, either Federal or State [9] Constitution requires with respect to the reapportionment of Ohio House and Senate districts?

MR. DELEONE: Show an objection to the question.

A. I know that it has—should I answer?

MR. DELEONE: Sure, go ahead.

A. I know that it has to be Constitutional, Ohio Constitution, Federal Constitution, I think the Voting Rights Act, but in terms of the details of what is required and all the rest of that I don't know.

Q. All right. I take it that you relied on Mr. Tilling to assure that the plan as drawn by the 1991 board comported with Constitutional and other requirements, is that right?

A. Yes, I relied upon him.

* * * *

[12] Q. All right. Did you have any discussions with Mr. Tilling prior to the adoption of the plan about the plan or the legal requirements of the plan?

A. I don't think we ever talked about—I mean, I generally knew what, as I've already testified to, the Constitution of Ohio and the Voting Rights Act, but fundamentally he showed me the plan and said, "This is within the framework of the Constitution," and I relied on it.

[13] Q. When did he first show you that plan?

A. I don't remember.

Q. Was it shortly before the September 30, 1991, Apportionment Board meeting, do you recall?

A. You know, I may have seen that plan the first time at the meeting.

Q. At the Apportionment Board meeting?

A. Yeah. I think—didn't we get a map of the thing and then there was a problem with wards and precincts or something and they—

• • • •

[26] Q. Do you know whether anyone has done a comparison of the 1981 lines and the 1991 lines to determine that they were maintained to the extent possible?

MR. DELEONE: Object. Well, object but if you know, answer.

A. I don't know.

• • • •

[27] Q. Governor, what is your understanding of the term majority minoirty districts?

A. My understanding is that we had to guarantee that minorities in the state were properly represented in compliance with the amendments of the Civil Rights Act.

MR. DELEONE: Voting Rights Act.

A. Voting Rights Act.

Q. Have you ever read the amendment to the Voting Rights Act or someone reported to you their substance?

A. I've never read it.

Q. Did you receive any advice of counsel with respect to the legal requirements for the plan, and I'm not asking, Governor, that you disclose such advice to me, merely whether you received it?

[28] Advice from legal counsel?

Q. Yes.

MR. DELEONE: Does that include Mr. Tunnell? Are you including him who is a member of Mr. Voinovich's staff?

A. I'm not sure we have talked about this.

MR. DELEONE: Okay.

A. I don't know if I did or not. All I know is that there was a concensus that what we were doing was in accord with the Constitution and it was proper.

Q. Okay.

A. That basically was it.

Q. And that consensus, I take it, came from—strike that.

The consensus was among you, Mr. Aronoff, Secretary of State Taft, and Mr. Tilling, is that correct?

A. I think the understanding was more with Mr. Tilling that he represented that what had been put together was proper.

Q. So you relied on Mr. Tilling to comply with the Board's directives regarding the plan?

A. Yeah, and I assumed also that if he had—if he had legal counsel they consulted with him but I more or less looked to him.

[29] Q. You personally did not have any consultations with counsel that you recall regarding the plan?

A. I can't remember any conversation.

Q. Are you aware of any analysis that was conducted regarding racial bloc voting?

A. No, I'm not.

* * * *

TRIAL TRANSCRIPT (December 17, 1991)
[Docket #130]

KING—DIRECT

[161] Q. Have you had an occasion to review the 1991 apportionment plan as adopted by the apportioning board?

A. Yes.

Q. Have you also had an occasion to review the plan as repaired by the minority, the Democrats in this area?

A. Yes.

Q. Have you also had an occasion to review the plan as reviewed by the Ohio Republicans?

A. Yes.

Q. Did you undertake an analysis of the partisan bias with regard to each of those plans?

A. Yes.

Q. And what is partisan bias?

A. Partisan bias—would you like to turn to—

Q. Sure.

A. Eighty-nine.

Q. Exhibit 89?

A. If you like, partisan bias is an asymmetry in the treatment of electors from political parties by the electoral system. If one party can receive more votes for the same proportion of votes than the other party could receive if it received the same proportion of votes, then that's bias.

Q. And have you had occasion to perform what's known as a seat vote curve?

A. Yes.

[162] Q. —analysis.

A. Yes.

Q. And what was your basic methodology in the seat vote curve analysis?

A. It's based upon a multiple regression analysis, well accepted technique that's been used for well over 100 years as the most common statistical technique used in the social sciences.

Q. I will direct your attention to Defendant's Exhibit 86 for a moment. What is that; what does that exhibit show?

A. This shows the translation of the average district vote proportion across districts into the average proportion of seats for the two parties.

So, for example, in this hypothetical curve the wavy line there indicates that if the Democrats on average across districts receive approximately 50 percent of the votes, then if you go up to the wavy line and over to the left, you can see that the seat proportions for the Democrats is somewhat above 50 percent.

In fact, it's about 54 percent. That means if the parties in this hypothetical curve were to split the votes equally, which they don't, but if they were to, then the Democrats would receive approximately four percent more votes than the Republicans, and the Republicans would receive approximately four percent of the seats less.

[163] Q. All right, and has the seats vote curve analysis been accepted as a matter of political science?

A. Yes.

Q. And over what period of time?

A. It goes back to, I believe, just before the turn of the century.

Q. Now, what is the issue of partisan swing as a matter of political science and statistics?

A. Partisan swing is as exemplified in the exhibit that you're referring to indicates how one, how the votes in one year translates into the votes in the next year. One can see from Mr. "X" for example that this exhibit portrays the district, individual districts.

Each district is a circle, and so you can see that when the Democrats receive a higher proportion in 1989, they get a higher proportion in 1990, not exactly, but roughly.

* * * *

[164] Q. I would also indicate for the record that Dr. King was deposed on Friday of last week. His ex-

hibits were marked, provided to counsel for their review at that time, and he was cross-examined by the plaintiffs. Dr. King, I think we're on Exhibit 88. Would you describe that?

A. Yes. This is a summary of partisan bias for each of the years from 1968 to 1990. This is actually an update of something that I published previously before I was involved in this case. If the horizontal line that goes across at zero partisan bias indicates fairness between the two political parties.

If the line, if the staggered line is above that zero mark, then the bias is in favor of the Democratic party. And if it is below the zero mark, the bias is in favor of the Republican party. So, the partisan bias was estimated at each of the election years and the points were connected for visual clarity.

In '68 and '70 you can see the electoral system in the Ohio State House was considerably biased in favor of the Republican party. After the 1970 redistricting the system became biased in favor of the Democratic party and remains biased in favor of the Democratic party until 1990.

Q. Does this Exhibit 88 reflect the partisan bias inherent in the 1971 apportionment plan and the 1981 apportionment plan?

[165] A. It shows that the 1971 apportionment plan is, had quote an enormous effect on the Ohio State House electoral system. In fact, it's the largest effect that's ever been noted in the academic literature. For the 1981 plan the effect of the plan on the system was not. But it kept the same level of Democratic bias.

Q. And then turning to Exhibit 89, would you, does that chart indicate the same analysis for the Ohio State Senate?

A. Yes.

Q. Now, I want to talk about Exhibit 90. Can you see this, Dr. King?

A. Yes.

Q. First of all, does Exhibit 90 address the Ohio State House?

A. Yes.

Q. All right, and we have on the vertical axis partisan bias?

A. Yes.

Q. And again would you briefly explain what that is?

A. This is the same square as on the previous page that we just discussed. When partisan bias is above the line, that's bias in favor of the Democrats. When it's below the line, that's bias in favor of the Republicans.

A. Perhaps I can explain in slightly more detail. Let's look at the number point 04 for example.

[166] That means that the Democrats are receiving four percent more votes than they should under a fairness standard, and the Republicans are also receiving four percent fewer votes than they should under the fairness standard.

Q. And the horizontal axis is a time analysis by year?

A. Is the election year.

Q. Okay. I want to talk for a moment about proportional representation. Would you explain proportional representation?

A. Proportional representation is when if a party receives 52 percent of the votes it receives automatically 52 percent of the seats. That's the law in many countries. It's not the law in the United States.

Q. Okay. And does your, does the seats vote curve assume proportional representation?

A. No. From the seats votes curve one can assess the electoral system in any way one desires. One could compare it to a proportionality standard, but I'm not a lawyer. But as I understand, the Supreme Court proportionality is not the relevant standard here.

The one that I was referring to is symmetry, treating the parties equally.

Q. And what is symmetry?

A. Well, for example, if one party receives 52 percent of the votes on an average statewide and they're able to [167] extrapolate that into 70 percent of the seats for example, then that's fair only if the other party, when it receives 52 percent of the votes is also able to translate that into 70 percent of the seats.

So, that's not a proportional translation, but it does treat the parties equally. That's called partisan symmetry or no bias in this partisan bias sense.

Q. Is it possible, Dr. King, with the tools you have available as a political scientist and a quantitative analyst and within a reasonable degree of statistical certainty to determine the partisan bias in any particular apportionment plan?

A. Yes.

Q. And with regard to Exhibit 90, then, returning to that, would you indicate first of all the line marked "current" up here with the "C", what that line is, and what it represents?

A. That's an analysis based upon the current districts for just the years 1984 to 1990. That line, if you will look back a few exhibits, is the same line for those years as was on the previous exhibit for the Ohio State House. It's just for comparison here.

Q. Does that indicate the results under the current 1981 apportionment plan?

A. Yes.

Q. Not the 1991, but the 1981?

[168] A. Yes, in the districts as they currently exist.

Q. Now, would you explain the relation to the line of partisan bias?

A. Well it indicates that there has been partisan bias in favor of the Democratic party for all four years.

Q. And what indicates that?

A. The fact that the current line, the line on that curve is always above the zero level of fairness.

Q. And that analysis is based on the vote curve analysis?

A. Yes.

Q. In is that a regression-type of analysis?

A. Yes.

Q. Now, the line that's marked "D" for Democrat is right here. What does that indicate to you?

A. Well, what that is is predictions also based upon regression analysis of what would have happened in 1984 to 1990 if the current plan, excuse me, if the 1991 Tilling plan—

Q. The Tilling plan?

A. Excuse me, if the 1991 plan proposed but not implemented by the Democratic party were put into effect in the year '84 through '90, if that were true, then that line, the dashed line at the top indicates that the bias would also be in favor of the Democratic party.

The precise configuration over the years differs [169] somewhat from the current districts, but that line is always above the zero level of partisan bias.

Q. What's the significance of the fact that the line is always above zero partisan bias?

A. It indicates that that plan is biased in favor of the Democratic party.

Q. And again that's the 1991 Democratic plan?

A. Yes.

Q. All right, what about "R" the Republican line?

A. That line is almost always below the zero line and therefore indicates Republican bias throughout the years '84 through '90 if the Republican plan were put into effect.

Q. Now, with regard to "T", Tilling, is that the plan drafted by Mr. Tilling and the plan as adopted by the persons responsible for apportionment in 1991?

A. Yes.

Q. Can you explain that line then?

A. Well, it shows that on average that lane is roughly zero. Sometimes it's below and sometimes it's above. So,

for some of those hypothetical elections, bias in favor of one party, and for some of the elections bias is in favor of the other party. On average you can see it is just about zero.

Q. Would you explain the significance if any between the lines for the Tilling plan the plan adopted by the board in [170] relation to zero partisan bias?

A. Well, zero partisan bias is fairness. Since the Tilling plan, since the line for the Tilling plan varies fairly closely around that line, it indicates that the Tilling plan is a fair plan according to the partisan bias standard.

Q. Would you explain the relationship of the line represented by the Tilling plan to the Republican, to the current plan and to the Democratic plan?

A. It provides another observation that in fact the Tilling plan is fair. Since we can reasonably expect in the Democratic plan to be biased in favor of the Democrats, the Republican plan to be biased in favor of the Republicans, that is in fact what that analysis shows. The Tilling plan lands right in the middle, so it really looks like a fair plan.

Q. Now, what is the concept of standard errors in a regression analysis such as the seats vote curve analysis?

A. Well, the public would be familiar with standard errors. For example, in the media journalists reported a margin of error or standard error is another way to express one's uncertainty in one's results.

Q. Now, in the block below, starting with the Democratic plan which is a plan consistently above the line for zero bias, what does the average partisan bias indicate? [171] A. That is the average over those four years. So, that what the table at the bottom of this exhibit is doing is summarizing in clear form all of the lines at the top. And so, shall I go through them?

Q. Yes.

A. One can see for example that the Democratic plan is on average across those four years biased in favor of the Democratic party by 2.6 percent, which means that

if the Democratic plan were in effect from 1984 to 1990, then the Democrats would receive 2.6 percent more seats than they should under this symmetry standard, a standard which dates back at least 40 or 50 years in the academic literature.

And the Republicans would receive 2.6 percent fewer seats than they should under this fairness standard. Current districts are simply biased in the same direction, although slightly more than the Democratic plan?

Both of those figures are considerably larger than their standard errors. Now, in both social science analysis and also in Supreme Court decisions everyone recognizes that a statistic should only be presented with a standard error. And if it's not, one can't really evaluate how well one knows that number.

The Supreme Court has said explicitly if the statistics are two or three standard deviations difference from zero, then we can reasonably conclude that it is different from [172] zero. And you can see that the Democratic plan and the current plan are two or three standard deviations above zero.

Q. We're talking here about standard deviation?

A. It's referred to by both terms.

Q. And how is that term, what is that term? What does it mean in conjunction with that graph?

A. It indicates how well we know each of the estimates we provide.

Q. Now, what, the standard error in the calculation, I think, you show as point zero one zero?

A. Yes.

Q. What does that indicate with reference to the average partisan bias of the Democratic plan?

A. That means roughly when you look at number 2.6 percent, point 026 which I'm translating to 2.6 percent bias in favor of the Democratic party, then we sort of know that number to roughly plus or minus one percent. It's plus or minus one standard error.

Q. And the relation of the partisan bias index or the number for the Democratic plan in relation to the standard of error, what does that tell you about the partisan bias of the Democratic plan?

A. It tells you that we conclude that there is statistically and substantial, significant bias in the current plan, and the Democratic plan.

[173] Q. That's the 1981 apportionment?

A. Yes.

Q. Would you explain the average partisan bias of the current 1981 apportionment in relationship to the standard error?

A. According to this partisan symmetry standard, the Republicans are receiving approximately 3.3 percent of the seats, more than they should under this, under treating the parties equally standard.

Q. You said the Republicans.

A. Excuse me, the Democrats are receiving approximately 3.3 percent of the seats more than they should, and the Republicans are receiving 3.3 percent seats fewer.

Q. And what is the average partisan bias index for the current 1981 apportionment plan in conjunction with the standard error and in relationship to the location of the line above partisan bias, zero?

A. We can see that number is many times the size of the standard error, and therefore one can conclude statistically and substantially indicates bias in favor of the Democratic party.

Q. Dr. King, with regard then to the Republican plan that is the plan proposed but not accepted by the Ohio Republican Party, would you explain the average partisan index and the standard in conjunction with the line below the partisan [174] line?

A. The average bias for the Republican plan looks like a mirror image for the average partisan bias for the Democratic plan. The figure there indicates that if the Republican plan were put into effect, the Republicans would receive approximately two percent more of the

seats than they should under a fairness standard, and the Democrats would receive approximately two percent of the seats fewer.

Q. And finally and most importantly the Tilling plan or the plan adopted by the 1990 persons responsible for apportionment, would you explain the average partisan bias index and the standard errors in relationship to the location of the line for that plan?

A. The average partisan bias estimate made there is minus point 006, which is six tenths of one percent bias in favor of the Republicans. However, this is not even as large as the standard error, much less to two or three times as large.

And therefore as according to the Court and standards that number is not statistically different from zero bias, and therefore I would conclude that it's a fair plan.

Q. In summary then, do you have an opinion as to the fairness of the plan adopted by the 1991 apportioning people with regard to the partisan bias of that plan or the fairness of the plan as adopted?

A. To the Tilling plan?

[175] Q. Yes.

A. Yes, the Tilling plan, I believe, is a fair plan by this standard, yes.

Q. And do you reach that conclusion based on a reasonable degree of certainty in the area of statistics and political science?

A. By reasonable degree of certainty that is actually present there, yes.

Q. Now, did you do a similar analysis for the Ohio State Senate?

A. Yes.

Q. And what generally were your conclusions regarding the Senate?

A. Well, the electoral system in the Senate for the last two decades or so has actually been biased in favor of the Republican Party, but if you will look at where votes are wanted, the Republicans are wasting many

fewer votes than the Democrats are, so before the 1991 plan the Senate system was biased in favor of the Republicans.

You can see that by the previous exhibit. My analysis of the senate plan by Tilling and by the current districts and the Democratic districts is a mirror image of the House plan. Current districts are biased in favor of the Republicans. The Democratic districts are the most or actually the least biased in favor of the Republicans. [176] They're the highest on that curve.

The Tilling plan is next. And the Democratic, I'm sorry; excuse me—then the Republican plan is most biased in favor of the Republicans.

Q. And are you able to make any conclusion regarding the Tilling plan, the plan adopted with respect to average partisan bias in relationship to zero, the line at zero, or symmetry?

A. One can't statistically distinguish that line from zero bias.

Q. Can or cannot?

A. One cannot statistically distinguish the Tilling plan from zero bias.

Q. What does that mean?

A. That means it is a fair plan so-far as we can tell on the basis of this analysis.

Q. I'd like to turn your attention to Defendant's Exhibit 92. Have you had occasion to conduct a bivariate ecological regression analysis with respect to the issue of racial bloc voting?

A. Many of them, yes.

Q. What is 92? Tell us the first few pages.

A. The first few pages are a key which indicates the list of the race, of some of the races which we analyzed. And perhaps we should—we can skip the details of which since [177] the findings are quite similar across all 200 races.

Q. Just take one example, say item 17, U.S. Senate. Just at random what is the district?

A. Item 17, we took all the precincts for the State House and examined the race for the United States Senate, broken down within that state house district, and performed a ecological regression and other analyses within that district.

Q. And the race itself, 86 "S", what does that indicate if anything?

A. That's the racial for the Senate. "S" stands for Senate.

Q. Next column "D" is the—

A. That's District 42.

Q. And 1986?

A. Is the year.

Q. And U.S. Senate?

A. That's the race we analyzed.

Q. How many different races in total did you analyze under the bivariate ecological regression analysis?

A. There are 210 presented here, but in fact I actually analyzed quite a lot more. I don't know the exact number.

Q. More than 210?

A. Yes.

Q. Okay. Now, I'd like to turn to Exhibit 93, titled [178] "Listing of Scatter Plots."

A. At the beginning here is another key which you see resembles very closely the previous key. Shall well turn to some of the scatter plots?

Q. Yes. Let's take one scatter plot and explain what that is, page 93-1 perhaps.

A. Well, this is the proportion black in the precinct is along the horizontal axis, and the Democratic proportion of the two parties' vote is along the vertical axis. So, the higher the vertical axis, the more the precinct voted for the Democrats, and the lower the more the precinct voted for the Republicans.

A. Each of the little circles on this graph is a precinct. In ecological regression all one district is fit a straight line to this set of points. The line is not plotted

here, but you can just by eying it, you can see where the line is. The steeper the line, the more the relationship between proportion black and Democratic votes.

And as you can see, as the proportion black is higher, those precincts have a much higher probability of voting for the Democrats in this particular set of precincts. There are no precincts where the proportion black in that precinct is above 75 percent, but even when you get up to about 60 percent, those precincts when the district is about 60 percent black, those districts are voting almost 100 percent [179] for the Democratic candidate.

Q. And what does that tell you if anything regarding racial bloc voting?

A. That it exists and is very, very clear if there ever was a pattern, it exists here.

Q. Does your analysis lead you to any conclusions with regard to races throughout the entire state?

A. That there exists racially polarized voting in a significant way in all of the elections that I've analyzed.

Q. Have you had an opportunity to review Mr. Henderson's analysis of racial bloc voting in Henderson Exhibit 2, which I will is at tab 4.

MR. ATKINS: That's tab four.

Q. Let me hand it to you; it's Henderson Exhibit 3.

A. Yes.

Q. Have you, first of all, did you observe any scatter point plotting with regard to that alleged regression analysis?

A. No.

Q. Did you observe any calculation of standard of error or standard deviation?

A. No.

Q. And what is the absence of a standard error or standard deviation in a bivariate regression analysis?

A. That means we don't have any idea how precise we should [180] take these numbers to be. For example, these figures purport to indicate the proportion of black voters who vote for the Democrats.

We can't ever know that for certain unless we can follow local blacks into voting booths and look over their shoulder and see how they vote. That's not legal in the United States. Those are estimates, but the question is how good an estimate is it.

If I said to you the weather tomorrow is 15 degrees point 216483, you'd say that's absurd. You don't know the weather that precisely, and since we don't have any idea at all of how precise these estimates are, I really don't know what to make of that.

Q. How many districts or how many races were analyzed in Henderson Exhibit 3?

A. Eleven.

Q. And how many did you analyze?

A. Over, well over 200.

Q. And in the absence of a standard of error on only looking at eleven districts, what if anything can that reasonably lead you to conclude about racial bloc voting?

A. Well, let me give you two answers. One answer is that one can pick, in almost any set of data, one can pick 11 points out of however many there are and find almost anything you like.

[181] That's why statisticians get the reputation for doctoring data because one can do that. So, we needed to know whether these districts are representative of all the other districts. So, from that perspective we don't have any way to evaluate it.

From another perspective, let's imagine for example that these numbers are fairly precise. We don't know that so just take that as an assumption. If we do, then there's racially polarized voting here, fairly clearly.

Q. And give us an example of what leads you to that conclusion.

A. Well, in District 12 which is the first district presented here, slightly less than 95 percent of blacks according to this estimate are voting for the Democrats, and 64 percent approximately voting for the—of whites

are voting for the Democrats, that's racially polarized voting.

Q. Have you had an occasion to review Mr. Henderson's calculation of and use of a voting index or political index?

A. Yes.

Q. Would you explain to the Court how that index was calculated?

A. Well, as I understood it, what the index did is takes statewide vote for the five statewide offices, break them down into legislative districts, and total up the number.

Votes for the Democrats in each district total up the [182] number of the votes total for the five statewide offices in the district and divide the first number by the second number to get a proportion of Democrats of the five statewide offices in each district.

Q. Do you have any comments or criticism concerning the use of such a voting index or political index in an attempt to determine political gerrymandering or not?

A. It assumes that if one breaks down statewide votes into districts, one can perfectly predict State House results. We know that can't be true. It's not true in any election precinct in the United States.

If it were true, then the State House and Senate would be represented by a majority of the same party. The Governor would always be of the same party as those two bodies. Moreover, all across the United States there's a tremendous increase in divided party control of Government.

Given that, one would be particularly interested in using a measure like this. The second point I have is that this measure is also not accompanied with any margin of error or degree of uncertainty or standard deviation analysis so it's hard to tell how precisely we should take the result, and there's good reason to be quite skeptical.

Q. Do you have any comments concerning the use of such a voting index with respect to any kind of analysis to a district-by-district?

[183] A. Do I—

Q. Do you have any comment or criticism concerning the use of a voting, such a voting index or political index with regard to the analysis of any particular district?

A. Yes. We know for example that if—that statewide elected officials come from different areas of the state and therefore will probably do better electronically in those areas of the state. So, the index is likely to be particularly biased in one way for some districts and biased in the other way for other districts.

* * * *

REDIRECT EXAMINATION

[192] BY MR. COLLIER:

Q. I want to turn back to your exhibit on the regression analysis on racial bloc voting. Would that be Exhibit 93?

A. One of the two exhibits on racial bloc voting, yes.

Q. Let's go again to races you have for the house. Would those include State House races throughout the State of Ohio?

A. For selected State House races. Since there wasn't much point in performing racially polarized voting analysis if there were no blacks in the district, for example.

Q. Now, you were asked questions about particular districts. Would you turn to page 93.1 just for an example?

A. Yes.

Q. What do those dots indicate?

A. Each dot is a precinct. The entire page refers to one district, District 45, House District 45. The precincts line up very clearly. The more blacks that live in the precinct the higher the Democrat proportion is, excuse me, the higher the Democrat vote is in that precinct.

The pattern is as clear as any pattern in the social sciences.

JUDGE DOWD: Let me inquire is there some way of determining a black precinct from a non-black precinct in this exhibit?

THE WITNESS: Yes, across we have the [193] proportion of the black voters in the precinct. So, it goes from zero percent to 100 percent, which the proportion goes from zero to one.

JUDGE DOWD: I see.

BY MR. COLLIER:

Q. On Exhibit 92 for a moment, if we pass the key which lists the 210 races, we get into the ecological regression analysis. Do you have that page?

A. Yes.

Q. What does that show under "Votes for Democrats BL-WH"?

MR. ATKINS: What page is that, counsel?

Q. It's the fourth page into exhibit 92.

A. That number is an estimate of the proportion of the blacks voting for the Democrats minus the proportion of the whites voting for the Democrats. Democrats, all those numbers are positive which indicates all my estimates vote—blacks voting for Democrats in higher proportion than whites voting for Democrats.

The numbers are sometimes quite large, sometimes small. Almost all of them are significantly larger than the standard error which is presented in the fourth column there.

Q. What does that indicate, the fact that the third column figures are higher than the standard error?

A. That indicates that we can conclude both substantively and statistically that there exists racially polarized voting [194] in all the districts analyzed here.

Q. Was there any exception to that?

A. There might be one or two in the two hundred. We can summarize them by looking all the way at the

end of the exhibit. For average results, it was just an average across all of the races analyzed in this exhibit. You can see that the difference in the proportion of the blacks voting for the Democrats minus the proportion of the whites voting for the Democrats is about 44.1 percent. So, that's an enormous difference.

Q. When you, and Mr. Gilliam asked you, I believe his final question about how you determined proportion of whites voting for black candidates, you indicated that could be done from your regression analysis.

A. Yes.

Q. How would you do that basically?

A. Well, one can't find it in this particular exhibit, except that we know from this particular exhibit that whites vote for Democrats less frequently.

One can find the results very easily from ecological regression analysis which I did perform. I had to summarize the results in some, which since there were so many of them and this is what I chose to present since it seemed to be the position at hand.

One can find the proportion of whites voting for [195] Democrats if we skim to the scatter plots, again an easy way to see it from the scatter plots, if you look at proportion black in the district around zero.

Look at all the precincts where the proportion of black is zero over on the left hand side. From the scatter plots you can pick the average of those is a good estimate of the proportion of the whites who voted Democratic.

So, in this first figure which is 93-1 the average of the precincts where the proportion of the blacks is approximately zero a little over 50 percent.

Q. Besides bivariate ecological regression analysis, did you use any other kind of regression analysis as a test?

A. Well, I used other statistical tests. One is the scatter plots. The scatter plots reflect both an ecological regression analysis and homogeneous precinct analysis, which is what I was just talking about.

We know exactly how blacks and whites vote if they're in homogeneous precincts and if they're in precincts which are black or white. In this district we have homogeneous whites, and some of the districts we have homogeneous black, precinct that is.

I also performed another statistical technique which is of more recent invention. The texts we talked about so far go back about 50 years. The other one for which I have not presented an exhibit but it's called an aggregated compound [196] model which has been written about the statistical literature by myself and others.

Q. This is a test?

A. Yes, another test for racially polarized voting, and it also indicated there were significant degrees of racially polarized voting.

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EXHIBT B TO NOTICE OF FILING RECORD
(Apportionment Board Transcript: February 11, 1992)
[Docket #147]

[45] DR. KING: Thank you.

Good evening, everyone. I was asked to address two questions. The first is, is there racial bloc voting in Ohio, and the short answer to that is yes. The second [46] is, how does one draw districts to protect the minority voting interests, and the short answer to that is, there's many factors that affect the election of minority candidates, and one should take into account as many of these as possible. They include, among other things, incumbency, racial bloc voting, racial configuration of a district, campaign funding, and several others. Finally, I will make a few closing remarks about political fairness.

I'm now going to present some evidence on these matters and make eight specific points in the process. The first is one I've already made essentially, and that is that there exists extensive racial bloc voting.

The first exhibit, which is Exhibit 108, we don't have transparencies. It's approximately 250 pages. It would take a little while to put up. However, we have an analogous figure that Mr. Collier has already shown. Perhaps we can put that up and we can take a look at it.

We've done an analysis, as we're about to see and as we've already seen briefly, in every district in which there was a majority black population and in numerous others throughout the state, and we've done this in each district for the House races and also for statewide races and national races and state senate races.

[47] Well, if the Board has—here we go. If I could just refer—this is an example of a district. The one that the audience is looking up at over here is not the same one that the Board is looking at in the exhibits, but they're analogous. And the results in racial bloc voting are so similar across the entire state that it almost doesn't matter which district you choose.

In any event, in the top right-hand corner of this figure are precincts, in whichever district you're looking at, the 45th one up there or 21st in your books, even very high proportions of the black voting age population. The farther to the right the little dot or circle appears, the higher the proportion of blacks in the population. The higher a dot appears, that is on the vertical axis, the larger the vote for the Democratic candidate.

As you can see, for the largely black precincts, they vote overwhelmingly for Democratic candidates. As you can also see on the left-hand side of the graph, when the proportion of black is very low or even close to zero, the support for the Democratic candidate drops quite a bit. So this is a standard example of racial bloc voting.

If you focus on only the districts at the extremes, that's called a homogenous precinct analysis. [48] If you focus on the slope of the line one would fit to those points, that's called an ecological regression analysis. And there are other statistical procedures we've used to analyze the data, as you can see on the form there.

If you like, we could go through some of the 250 other graphs here, but I think perhaps we should go on to Exhibit 109 since the results are quite—are remarkably similar across all of these.

Exhibit 109 summarizes some of the results in a slightly different format than we've shown before either here or in court. It summarizes the results in this ecological regression analysis for districts in which there is a majority black population.

In the column labeled whites, that's the proportion—these are estimates, but there's—one can't go into a voting booth and follow people in and actually tell how whites and blacks are voting. We don't really know these things. That's why we have to use statistical procedures.

The column labeled whites is an estimate of the proportion of whites who vote for the black Democratic incumbent in State House races averaged over all the incumbents. And as you can see, in 1984, that's 56.76

percent. In the same year, the average over the same [49] districts, the proportion of support for the black incumbent candidates among black citizens is about 95 percent. The difference between those figures is racial bloc voting. That's obviously—I mean, it goes without saying, this is important political information for anybody running for office.

The same thing is true in 1984 as is roughly true in 1986, 1988, 1990. These are averages, and as I said, similar facts apply to detailed analysis of almost every specific district in the state.

The second point is that, as you can see from this figure, there is crossover voting of whites for black candidates. That's what's called crossover voting.

Indeed, in these districts, it appears that a majority of whites have supported the black incumbent candidate, so the crossover voting is large in a sense. Nevertheless, would one conclude from that that if you have a very small proportion of blacks in the district, that that district could elect a black candidate? Well, it could, but it's extremely unlikely to do so. The reason why is because you would not see crossover voting if the whites could elect a candidate that was not black. We would make that inference from the large amounts of racial bloc voting in the state.

Is there a question?

[50] Well, if we could turn to the next exhibit, which is 110. This is a different version of some of the data that Mr. Collier has shown you. In the first set of columns on the left-hand side, we have ranked from most to least in terms of the proportion of the black population in the district, and you can see—and on the left-hand side, we have the current districts, and that is the districts on the 1981 apportionment plan. This is to get a basic sense of what the '81 apportionment plan was about with respect to minority communities, and then I'll compare that to the 1991 plan on the right-hand side.

So with respect to the left-hand side, that is the current 1981 districts, you can see that there are three dis-

tricts right at top of very high proportions of the black population. This is clear evidence, one would conclude, of packing, which is something that is not in favor of the minority community. In addition, there are—there's only one district which has a proportionate black population, between 50 percent and 74.8 percent, so in that area, where you want to have most of your districts, in any event, there's only one district on that point.

If we look over on the right-hand side, we now have a ranking of the districts under the proposed plan [51] also according to the black population. The first thing you can see at the top is that the packing has gone away. No longer are there 90 percent districts in terms of black population. There aren't even 70 percent districts.

The second thing you might notice is that the underlined entries in each column are entries greater than 50 percent, and so you can see that in the Tilling plan, the majority Apportionment Board plan, there are twice as many majority-minority districts as under the current plan.

One thing that plaintiffs in this case have made a point of is that there are fewer districts under the Tilling plan which have greater than ten percent of the minority population, and that's true, because look at these two districts—look at these two columns. The ten percent goes all the way down to number 27 on the left-hand side and goes down to about number roughly the 20th district on the right-hand side. So what's this about? What happened was Mr. Tilling and his associates who drew the plan took fragmented minority votes spread throughout the state and joined them together in order to empower them electorally. That's the basic idea of following the Voting Rights Act, and that's—if you just look at this, this is a good summary of what [52] happened to the black eommunity under these two plans.

The next thing I'm going to show is an Exhibit 111. This is preparatory to a few exhibits that will follow this

one. In the exhibits that follow this one, I'm going to use a statistical model called regression analysis to make some predictions. And what I wanted to show you first was that the predictions work. So what I did in Exhibit 111 was to calculate the predictions for elections and then compare the predictions to the actual results. If you look, for example, in the top left-hand corner, District 12, the actual election results in District 12 was 88.54 percent for the Democrats, and my prediction was extremely close to that, obviously. Some of the districts are—some of the districts as good as that; some are a little worse; some are a little better. But overall, as you can see, the predicted result works out roughly as expected.

Let's go on to the next exhibit, please.

In Exhibit 112, we use some of the—I'm using some of the predictions which I'm repeating from the previous page, and I'm going to compare them from predictions under the 1981 plan to predictions under the 1991 what I'm calling the Tilling plan.

In District 12, in the current plan, that is the '91 plan, that corresponds sort of roughly to District 10. [53] under the Tilling plan. I say roughly because if they correspond exactly, then there wouldn't have been any redistricting, obviously. But the incumbent member of the House is now in District 10 and was previously in District 12, the same person.

If we look down the first column there for predictions in 1984 under the current plan, the 1981 plan, we can look down those proportions, and those are predicted proportioned Democratic in each of the black incumbent legislator's districts, so obviously we predict everyone will win and win by fairly large margins.

In the first three cases, we have clear packing where they're expected to win by very large margins, where there's wasted votes. And in others, they're slightly smaller, out in most of these, it's quite large.

In the next column labeled—under the prediction labeled "Tilling," we have what might seem at first glance to be packing. It might seem that way. Now, let me show you what it might seem before I convince you that's not right.

The prediction is that under the Tilling plan, the proportion of the votes would be higher than under the current plan. So in the—in most of the districts, not all, but, for example, in District 25 under the current plan or district 30 under the Tilling plan, the [54] incumbent member of the House will receive 54 percent of the vote, whereas in Tilling's plan, they would receive 75 percent of the vote. So this is the Democrats' argument or the plaintiffs' argument in a sense, by showing that those proportions have increased, it seems at first glance, without doing a more sophisticated analysis, like there is packing. However, one would not want to, as we've mentioned several times already today, one would not want to draw districts to suit particular incumbents. One draws districts to benefit in this case the minority community. If the—suppose the incumbents decided not to run. What would happen? God forbid, suppose, you know, one of them died. There's many things that can happen.

Now, one of the most important things about incumbents, we wouldn't want to draw districts for incumbents. So the last column is another prediction also of the Tilling plan, but this under the hypothetical situation in which the incumbents decide to retire or not run, so the hypothetical situation instead would be an open seat election.

So if we look at that column, since the incumbency advantage in Ohio is something less than around ten percent, those figures are about ten percent lower than the second to the last column. Those figures [55] seem quite clear in that they do not pack or waste minority votes. And I've replicated essentially the same thing from 1984 and 1986, 1988 and 1990. These are the first two years. It's a similar analysis in the years. The main thing that

would differ from year to year is just the size of the incumbency advantage, which seems to shift around as political fortunes shift, as they often do.

So the question is, what's a district which would be fair to the minority community? What predicted proportion of the vote would be fair? Well, these are predicted proportions of the vote under certain kinds of specific contextuals.

The last column is that the incumbent decides not to run, but there's plenty of other things that could happen. For example, if the incumbent decided not to run and the Republicans decided to fund somebody adequately, which they tend to do, which they have not done very frequently in these districts, then these proportions would be a lot lower.

So they're certainly not packed districts, but, on the other hand, it seems to me that black incumbents would still be likely to win in these cases.

Finally, I'm going to make a couple of very brief remarks about partisan fairness. This is an [56] analysis that I did, most of which actually I did before I was—several years before I was involved in this case, in fact.

At that line, this line represents the degree of fairness of the Ohio electoral system. When that jagged line is below the horizontal line at zero partisan bias, that's bias in favor of the Republican party. That means that the Republican party would be getting more seats than it deserves under specific political fairness criteria.

In 1968 and 1970, the Ohio State House was biased in favor of the Republican party by a good deal. Then came the 1971 redistricting plan, and that bias—that changed the electoral system. You can see that line shooting up to above zero, and, in fact, it stayed biased in favor of the Democratic party for the rest of the decade through 1981, and since the 1981 reapportionment plan didn't change very much, it stayed roughly for the next two decades.

The effect of the 1971 redistricting plan, which is still with us, it remains the largest effective political gerry-

mandering ever noted in the academic literature, and that's the plan that exists now.

And finally, if you want me to look at the graph that you were putting up at one time. You can see—and [57] this is sort of a quick summary of it. You can see why both sides are arguing about this. In the Tilling plan—well, actually, let me just make the first point. That is, under the current districts, you see that solid line there, that's just the same piece from the previous graph, so that's biased in favor of the Democrats, and as Mr. Collier said, the Democratic plan is above that. The Republican plan—and you can't quite see it since the bottom of it is—the bottom of the word "Republican" is a little bit obliterated—is the lowest, which means it favors the Republican party most.

And the Tilling plan is fair. When you have a chance here—you've passed a fair plan. That's something that you should pay attention to.

Thank you.

CHAIRMAN VOINOVICH: Questions?

MR. COLLIER: To very quickly. Did you come up with a range relating to incumbency advantage?

DR. KING: The size of the incumbency advantage? Yeah. It is between roughly six and roughly ten percent of the vote.

MR. COLLIER: We'd just indicate for the record that each and every one of the exhibits that have been described today are in the exhibit books in volume seven.

SENATOR ARONOFF: Mr. Chairman, while Mr. King [58] is here, and I believe that this is a similar question to that of Mr. Collier, but take a hypothetical, for example, Representative Mallory's district. Representative Mallory is an incumbent that wins, although he has 45 percent minority Afro-American population. If Mr. Mallory were not a candidate in that district or a similar district and the Republicans decided to fund a strong candidate in that district, would there be the possibility or the probability of the Republican winning?

DR. KING: Well, I'd have to look into the specifics of that particular race, so I won't give a definitive answer about that particular race, but in—you mentioned—you asked it as a hypothetical question.

SENATOR ARONOFF: A hypothetical.

DR. KING: Certainly in districts like that, they would risk losing the district, yes.

* * * *

[84] [Secretary Tilling]

The other changes which are taking place in the urban counties, I want to stress this very carefully. It shows you what happens when you make what is a technical correction, that shows you it can have a significant impact on a very crucial policy variable, and that is black population. The changes that are made in the urban counties result only from going into the plan and trying to remove splitting of more than one political [85] subdivision between districts; nothing more, nothing less. And I would point out—and I know that the counsel for the other side is aware of this because many of these examples were given to us in the deposition provided by Bob Dykes, and we found some in our analysis where we had essentially split more than one political subdivision between districts. And so in going back and correcting that—and that's what these maps and corresponding charts reflect—that's why this plan is labeled as it is. It is the plan adopted by the Apportionment Board on October the 3rd with these technical corrections, and they are entirely, with the exception of Marion County, changing ward boundaries to make only one split between districts. All right? That's all it is. There's no ulterior motive. There's no skulduggery involved here. We've given you the legal documentation, the maps. You'll have plenty of opportunity to take a look at them and examine them, and we would like your response to that. But the fact is that because the original purpose of the plan was to try to maximize black voting strength in minority

districts, and we split political communities to do that, when you go back in and combine these communities into whole political subdivisions, you will either raise or lower the minority population, and there's nothing that can be [86] done about it. And I'll give you a couple of examples of this. Does everyone have a copy of the maps? Okay.

Let me give you a couple of examples of that. Of course, in Cuyahoga County, there are no changes, except I believe in Bedford and in Bedford Heights, because in each of these, we had one split precinct which we have now combined. One was the precinct in Beachwood, and the other, if I can find it—we basically restored communities to their whole status. So that effectively Cuyahoga County, with those two exceptions—and you can see, as I would read you the percentages, for example, and I'll read this. This is House District 8, black population 65.64, exactly the same number as in the majority plan as adopted, 62.30 for House District 9, exactly the same. So each of the minority districts in Cuyahoga County are not affected at all by the population changes or by the minority vote population.

In Franklin County, we have District No. 21, which in the version that we passed had a black population of 55.92. And you can see that by combining wards and precincts, that population has now dropped to 54.32, a minor change, but, nonetheless, one that you need to be aware of. In District 22, the black population in the plan that we passed was 48.29, and that is dropped to 44.68, so that is a more significant [87] change. but again, it results solely from combining political subdivisions and essentially made a difference here of about three percentage points.

In Hamilton County, District 30, in the plan that we passed, approximately had 61 percent black population, Representaitve Rankin. That is now down to 55.98 or essentially 56 percent, so a difference of five percentage points.

Representative Mallory, who came before this Board and asked that he not be given additional blacks, the plan that we passed by the Board on October the 1st, Representative Mallory had 59.3 percent black population. The current plan has 47.26. And again, I want to make it clear, because that is a very significant decrease, and you can look at it on the map and you'll see exactly what we're talking about. That is only a result of recombining political subdivisions, and there's no other motivation whatsoever. But it points out, and I think you want to examine these numbers in real detail. It does illustrate what happens when you follow the Ohio Constitution, not the Voting Rights Act. There is a significant difference in minority population in some areas. And we would appreciate input from the minority community on this. This is an amendment we're laying on the table for consideration, and because of the detail [88] and minuteness involved, it's going to take a little bit of time to go through and satisfy yourself that, in fact, A, we did what we are saying, and B, are those results significant enough to accept the amendment or stick with the original plan.

So that essentially is what I want to say, and I'll turn it back to the Chair.

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EXHIBIT C TO NOTICE OF FILING RECORD
(Apportionment Board Transcript: February 18, 1992)
[Docket #147]

[47] DR. KING: I would like to introduce Exhibit 120. This is a slight extension of the exhibit that I presented last Tuesday here. It includes the 30 districts with the highest proportion of blacks in the state under the current districts, under the Tilling plan, which is what the majority passed, and under the Democrat 7(D) plan. As I understand it, the plan that was introduced today is the same for the districts that I am talking about.

If you look at this, this just lists from top to bottom the highest—the district with the highest proportion of blacks. And as you can see again in the current districts, that is the '81 districting plan, there is a few districts at the top where blacks are packed very heavily into that district. And as I mentioned last time, under the Tilling plan the districts are unpacked. Their wasted votes have been pretty much eliminated.

[48] Under the 7(D) plan, that's somewhere between the two plans, so you can seen that the Democrats have gone partway from the '81 districts to the current—I am sorry, to the Tilling plan—that is to the majority Board apportionment plan. For example, there is one additional majority minority district under that plan, whereas there is four additional under the Tilling plan.

In addition, they used to use the number of districts under ten percent as a figure, and/or they have previously, and you can see that the number of districts under ten percent is the smallest in the current plan, it is somewhat larger in the Democrat 7(D) plan, and even larger in the Tilling plan.

Finally, you can look at the—another way to cut the same exact data is the number of districts with greater than 35 percent of the vote. And it's the same under the current and 7(D) plan, and it is one larger under the Tilling plan.

So my conclusion last time was that the Tilling plan is, was drawn as the majority plan was drawn in order to combine minority votes which were scattered across the districts throughout the state into districts which would empower them. And the 7(D) plan does go partway in that direction. It doesn't go as far as the Tilling plan. Okay. That's the end of Exhibit 120.

[49] I would now like to make about six points about some of the testimony I heard this morning.

First, Mr. Gilliam quotes Mr. Henderson, their expert witness, who makes the point that if 99 percent of blacks supported a black candidate and 98 percent of whites support the candidate, then you presumably would call this, quote, a degree of racially polarized voting. Well, yes, this is a degree. And that was a, quote, racially polarized voting, but a small degree. Of course, the whole example is absurd since the degree of racially polarized voting that I showed was between 35 and 40 percent. In fact, even Henderson's exhibits show this level of racially polarized voting.

Any politician I have ever met would call it an extremely important fact that running a black rather than a white candidate reduces the political party's electoral margin by, among white voters, by 35 to 40 percent. There are few other factors in politics that can generate a political effect this large with such incredible consistency. Anyone who might ignore it is just not being realistic.

Second, Mr. Gilliam defines racially polarized voting in a slightly different way, and that is a situation in which a majority of whites vote against the black candidate, and the majority of blacks support this [50] candidate. It seems to me that this is a perfectly reasonable definition for some purposes, but it is hardly useful for others if it ignores race-based voting of enormous political significance such as exists all over the State of Ohio.

But nevertheless, let's focus for a moment on the evidence for this definition of racially polarized voting.

Mr. Gilliam this morning presented quite selective evidence in his presentation. He showed that only—he showed—he spent quite a lot of time in an overhead talking about four of the eleven minority districts with very high cross-over voting percentages.

Why is it that he only presented these four districts? Well, the answer actually was presented later on. He showed it to us only for a second, but the last slide he presented here this morning did list more detail, and it shows that about half of the districts he analyzed or Mr. Henderson analyzed had cross-over voting of less than 50 percent, which meets Mr. Gilliam's definition of legally significant racially polarized voting, at least that part of it.

Third, according to Mr. Gilliam, Mr. Henderson is quite familiar with the testimony of others in court; however, Mr. Henderson unfortunately is not quite as familiar with what experts in this field perhaps should [51] be, and that is the scholarly academic literature on these questions. It's our responsibility as experts to provide the court and this Board with the best evidence available, the best data available and the best methods available. We all use the same data, but Mr. Henderson based his analyses on methods that were the best available information in the 1950s.

In contrast, I used these methods as well as methods developed during the last 40 years of scholarly writings and methods which were developed since the ones Mr. Henderson used, and also the Thornburg decision.

One type of information that one cannot provide with the methods of the 1950s, or at least not particularly well, is accurate forecasts of how well black candidates would do if the current incumbents were to retire. Most seem to believe that districts are drawn to represent people and not incumbents, and so this type of accurate and reliable forecast which is possible with methods now standard in the academic literature is useful. The Democrats provided no evidence about this issue at all.

The only such analysis presented in the trial or in front of this Board was presented here and it happened to be by me. And it showed very clearly that blacks are not being packed into districts. It also [52] shows that Democrats are not being packed either.

Another type of information that one could not reliably provide with the methods of the 1950s used by the Democrats was to forecast what would be the case in newly drawn districts. All the information presented this morning was about the 1981 districts only, which due to population changes don't exist any more. The plaintiffs also provided no information at all about the effects of the incumbency, about voting in primaries, or about numerous other factors, all of which we provided.

Why have blacks won in districts with white cross-over voting and racially polarized voting? Because in these districts the cross-over effect plus incumbency exceeded the racially polarized effect.

How do we know that this would be the case in newly drawn districts? How do we know this would be the case if incumbents retire? The second question is most important, I think. We can only know if one provides reliable forecasts. The Democrats provided no forecasts. I am not accusing them of providing unreliable forecasts because they didn't provide any forecasts at all.

I did provide those forecasts, and they show clear racially polarized voting and clear evidence that [53] black nonincumbents would do considerably less well than the present incumbents in those districts.

Fourth, in his affidavit, although it wasn't mentioned verbally this morning, Mr. Henderson spent some time accusing me of using what he calls the one equation rather than the two-equation method. As I have previously mentioned, he used a method which he calls two-equation method, but in fact actually it only involves one equation. But whatever it is, he calls it the two-equation method. This was developed in the 1950s. I used this method as well as others, and he apparently—well, the

plaintiffs have apparently missed an enormous scholarly literature that has gone a lot beyond this.

Mr. Henderson also claims to use a very popular computer program in existence for about 40 years for his analyses, and this is a very good computer program for many purposes, but it is not up to the task of analyzing redistricting plans with modern methods of political science and statistics. In fact, a computer program that I wrote under a National Science Foundation grant and provided, and I provide free of charge to anyone who asks, is being used in many states throughout the country to evaluate their redistricting plans.

PRESIDENT ARONOFF: I might add, that is the [54] only thing free in this whole proceeding.

DR. KING: Fifth, Mr. Henderson also talks about something called standard errors, in response to my criticism of him in the court trials for not presenting the standard errors, that is. Standard errors are just a quantitative estimate of the uncertainty of one's conclusions. It sounds like an awfully technical issue, but it is not technical at all.

The idea of presenting estimates of uncertainty along with analyses has always been understood formally by scholars and I believe intuitively by everybody else. It has also been in the public realm fairly formally for several years. For example, in the New Hampshire primary, you have heard polls trying to predict who is going to win. Nowadays these are reported with a margin of error. The candidate, Dan Rather says, will get 60 percent of the vote, plus or minus five percent. Plus or minus five percent, he says, is the margin of error. That is based upon what is called technically standard of error. It is a quantitative estimate of uncertainty.

We all, I believe, understand this. If someone reported a poll without a margin of error we would want to know what it is. If someone reported a poll with a margin of error of 50 percent it wouldn't provide very [55] useful information.

Any time you are given the opinion of an expert you should demand assessment of uncertainty of his or her inferences. Mr. Henderson provided none and none was asked for them to refuse to provide. This means one of two things. Either he is asserting that he knows everything perfectly, which is an absurd assertion from whoever makes it, or more likely he has no idea how certain or uncertain his results should be, or are.

Whichever it is, it is hard to take conclusions such as these in particular seriously. Let me just give you one more example. You go into your doctor's office and she says that you need an operation. She says you will probably live through this operation. Now what is your next question? My guess is your next question will be, how sure are you that I will live through this operation? What are my chances? How, you know, what is your level of uncertainty.

Mr. Henderson as your doctor says you don't need to know this, it is just not important.

Sixth, and finally, I want to say one final word about partisan fairness. You can't really blame the Democrats for preferring to run under something like the current districts which is, which are heavily biased in their favor. But the fact of challenge of an [56] argument does not prove these claims.

In fact, Mr. Gilliam has made a lot of arguments about how biased he believes the current districting plan is against the Democrats. He contends that all of the Republicans' concern for minorities is really just a veiled attempt to do political gerrymandering favoring the Republicans.

Attention to the Voting Rights Act, he contends, is just a way of sneaking in a partisan Republican gerrymandering. He made these arguments at the Federal District Court trial, is the first I heard of them. But in his closing arguments in that trial he withdrew them entirely and said he was no longer making a political gerry-

mandering claim. However, he has now brought them up again.

I think whatever the state of their argument is, it is worth saying that at no time, at no time in court or in front of this Board, or in any deposition, did he or anyone, any expert for the Democrats, provide any evidence whatsoever for this assertion. It is not just that they provided unreliable evidence like they did in their analysis of certain parts of the analysis of racial bloc voting; it is that they provided no evidence, no evidence whatsoever, for the fact that this is a partisan gerrymander. Why is that Because as my analysis showed earlier, this plan is fair.

Thanks.

* * * *

[JOINT EXHIBIT 15: FILED FEBRUARY 19, 1992)]
[Apportionment Board Transcript September 30, 1992]
[Docket #151]

[89] MR. ARANOFF: Before Mr. Tilling makes his presentation, Mr. Chairman, on behalf of yourself, Secretary of State Taft and myself, we recognized our [90] obligation to recommend a legislative reapportionment plan that complies with the requirements of the Constitution of the State of Ohio and the Constitution of the United States with the latter prevailing in the event of conflict. We have attempted to develop a plan within the general guidelines provided by the United States Supreme Court in its one person one vote jurisprudence.

We directed Jim Tilling and his staff to draft the plan redistricting the legislative districts of the Ohio House of Representatives and the State Senate. First and foremost they were instructed to follow the mandates of the United States Constitution as interpreted by the numerous redistricting and apportionment decisions of the United States Supreme Court. The plan was to be in compliance with all applicable federal statutes with special emphasis to be paid to conforming with the provisions of the federal Voting Rights Act. The draftsmen were cognizant of the findings of the federal court in the Armour case and were directed to conform any proposed plans to the court's orders and findings in that decision.

For the first time in Ohio history we sought through the public hearing process input from all sectors of the state: geographic, political, racial and ethnic. Especially we sought input on the process from minority [91] community representatives. The specific direction provided to staff was to create representative districts which maximized the effective representation of Ohio's significant ethnic and racial minorities.

It is our objective in recommending this reapportionment plan to achieve fair and effective representation for all Ohio citizens. We concluded that this can best be

accomplished through the preservation of county and political subdivision boundaries as delineated in Article XI of the Ohio Constitution in determining legislative representational districts. The U.S. Supreme Court has recognized that the state may decide that its strong interest in drawing electoral district lines along county and subdivision boundaries justifies variations between districts' relative populations. Staff was to construct a plan conforming with the provisions of Article XI of the Ohio Constitution and meeting the mandates of Federal Law and the United States Constitution. The Ohio Constitution requires the creation of districts which preserve county boundaries and political subdivisions wherever possible within the restraints of substantial population equality.

Ohio counties and political subdivisions are accurate representations of divisions between social groups, economic interests and political communities [92] within the state. Article XI of the Ohio Constitution recognizes and emphasizes the Ohio public policy that legislators can best represent their constituents and voters can more intelligently exercise their ballot franchise when their legislative districts are compact and contiguous rather than fragmented units divorced from and indeed possibly in conflict with the various other political subdivisions established by the state.

Members of the legislature are less likely to be visible and identifiable to their constituents if legislative boundaries are independent of other existing political boundaries. It is easier for citizens to identify their interest in their county or other political subdivision than in a legislative district whose boundaries are unknown to all but the most devoted political activists. A simple inability of the electorate to understand who their elected representatives are or what citizens their legislators represent can contribute to increasing voter apathy.

To link disparate geographic groupings of Ohio citizens simply to effectuate an exact degree of population

equality replaces the ultimate objective of legislative districting: fair and effective representation with numerically more equal but unfair and ineffective representation.

[93] Representative government is a process of accommodating group interest through democratic institutional arrangements. It is a legislative function to channel the numerous opinions, interests, and abilities of the people of Ohio into the making of the State's public policy. Appropirate legislative apportionment, therefore, should be legally designed to insure fair and effective representation of the legislature of the various groups and interests that comprise the electorate. In practice, of course, this ideal can only be approximated in any particular apportionment system by realistic accommodations of the diverse and possibly conflicting political forces operating within Ohio.

As Chief Justice Warren observed in 1964, indiscriminate districting without any regard for political subdivision or natural historical boundary lines is little more than open invitation to partisan gerrymandering. Some states, freed of a duty to follow county or other subdivision lines, have used their freedom to draw district lines to maximize the political advantage of the party temporarily dominant in the state's public affairs, a situation that has attracted increasing judicial criticism. We have only to look at the redistricting process in our sister states to find [94] numerous examples from the 1980s of partisan gerrymandering. A redistricting process that seeks the goal of fair and effective representation with only precisely equal numbers as a guide would tempt most partisans beyond their ability to resist. Incumbency partisan interest and personal invective could become the building blocks of the process replacing community of interest used in Ohio's more traditional subdivision based system.

The new technology available to redistricters provide those in the majority with a tempting means to discrim-

inate against any minority, political or otherwise. If county or other subdivision boundaries can be ignored, a personal computer can produce countless plans of absolute population equality but each having its own very different political impact. Computer techniques make it easy to create equally populous districts without regard to existing political lines but with regard to the political affiliation of the residents of those districts. Computers now make it possible to generate a large number of alternative plans consistent with equal population in a relatively short period of time and to analyze the political characteristics of each one in considerable detail. By using demographic growth projections, future characteristics can also be [95] accurately predicted.

The proof of this statement is found in many redistricting plans that followed the 1970 and 1980 census. The hope that gerrymandering would be self-limiting or correcting has not been realized. Partisan gerrymanders have scarred the fact of some state politics for the whole decade of the '80s. Gerrymandered districts can control the outcome of elections without effective regard of the will of the electorate. Ohioans do not want the draftsmen of the plans rather than the voters to determine legislative majorities. This would not be fair representation.

For the record, we should point out that for the first time in Ohio history computer technologies were made available to the public to develop apportionment plans. Some of the plans submitted to and reviewed by the Board were developed through the use of these public access computer terminals and contributed to the plan being sponsored by the Republican members of the Board.

In conclusion, we directed that our plan be fair to various partisan political interests. It is. It will create a more competitive political process in the selection of Ohio's legislators. It is our hope and belief that this plan will mean the end of partisan and racial gerrymandering in Ohio.

[96] The right to elect representatives is every citizen's portion of sovereign power. I believe the proposed reapportionment plan sponsored by Governor Voinovich, Secretary of State Taft and myself provides every Ohio citizen a fair and effective portion of the state's sovereign power. Thank you.

* * * *

[PLAINTIFFS' EXHIBIT A:
FILED FEBRUARY 19, 1992)]
[Docketed following Docket #154]

[Plaintiffs' Summary of Selected Portions of
Public Hearing Transcripts]

[ii] INTRODUCTION

The 1991 Ohio Apportionment Board conducted public hearings across the State of Ohio in August and September 1991. Twelve of the hearings were transcribed by a court reporter. Counsel for Defendants Ferguson, et al. have collected various quotations from the public hearings, as well as the meetings of the Apportionment Board, and such quotations are categorized into ten areas: (1) The "Mandate" to Create Majority-Minority Districts, (2) the "Totality" of The Circumstances, (3) "Minority Districts Must Be Drawn First, (4) Armour: Its Impact and Meaning, (5) Conflicts Between State and Federal Law, (6) Residency, (7) The Plan Will be Scrutinized by The Court, (8) The 1981 Plan Protected Minority Interests, (9) The Census Undercount, and 10) Whose Plan is Whose.

Selected portions of the transcripts from which the quotations are derived will be submitted to this Court simultaneous with the submission of this document.

The public hearings and meetings from which quotations were gathered are as follows:

Akron, Ohio	September 12, 1991
Athens, Ohio	September 3, 1991
Cambridge, Ohio	September 3, 1991
Canton, Ohio	September 4, 1991
Chardon, Ohio	September 5, 1991
Cleveland, Ohio	August 28, 1991
Columbus, Ohio	August 27, 1991
Columbus, Ohio	September 7, 1991
Dayton, Ohio	August 29, 1991

Mansfield, Ohio	August 28, 1991
Strongsville, Ohio	September 5, 1991
Toledo, Ohio	August 26, 1991
September Board Meeting	September 30, 1991
October Board Meeting	October 1, 1991

THE "MANDATE" TO CREATE MAJORITY-MINORITY DISTRICTS

"The courts have said wherever you can create a majority-minority district, you must do so, it's just that simple." Tilling, p. 8. (Toledo)

". . . there's absolutely no question that we want to do the very best job possible to protect minority voting rights and enhance their district." Tilling, p. 47 (Toledo)

"There have been countless decisions by U.S. district courts and by the U.S. Supreme Court that have stressed the importance of creating minority districts. And I would like to go on the record here, as I have at our two previous meetings, as saying that it is the firm commitment of the Apportionment Board to adhere to the Supreme Court guidelines in creating the maximum number of minority districts possible in the State of Ohio. There is absolutely no doubt in the mind of anyone who has followed this process through the courts that *we are under a mandate that wherever a majority-minority district can be created, that must be done. It is beyond the realm of discussion.* It has been firmly established by the U.S. Supreme Court fiat, and that is the primary operating principle that we must operate under." Tilling, p. 12. (Columbus 1) (emphasis added)

"So for those of you thinking about getting involved in this process and drawing maps, I would urge you to review the Supreme Court decisions, and *I want to make it clear that any plan that's submitted that does not make the creation of a maximum number of minority or majority minority districts that is possible, that plan is in serious jeopardy with the Apportionment Board and with the courts.* So that is the single most important change that has taken place in the redistricting process over time and the one that is most clearly spelled out in court decisions." Tilling, pp. 12-13. (Columbus 1) (emphasis added)

"What the Supreme Court has said loud and clear is persons doing reapportionment and redistricting throughout the United States have an obligation not to dilute minority voting strength so that where a majority-minority district can be created, and by that I mean a district in which minority voters can make up the majority of voters in that district—it's a bit of a curious phrase until you understand it—but where a majority-minority district can be created, they must be created.

"It's just that simple. So that our obligation in Cuyahoga County, and every one of the 88 counties that make up the State of Ohio, will be to ensure that minority voting strength is not diminished and, where possible, is increased." Tilling, p. 6. (Cleveland)

"There is absolutely no question what the law says on this issue. And we are going to make sure that minority voting strength in Cuyahoga County and in every county in Ohio where this issue is relevant, minority voting strength is not diluted and, if possible, we are going to do our best to enhance it." Tilling, p. 13. (Cleveland)

"The first one that's clear cut deals with minority voting districts and here, although it's not mentioned at all in the Ohio Constitution, the U.S. Supreme Court and federal court decisions at all levels have made if very clear that it is an obligation of policymakers at the state and local levels, too, for that matter to do everything in their power not to dilute minority voting strength, and in fact, where possible, to increase the number of those districts if population trends make that a feasible alternative. That is the first guideline we are operating under.

"It stems from the U.S. Voting Rights Act of 1962 as amended in the 1980s and modified by the Supreme Court decision. And simply stated, although this may not be the most important concern facing some of you here, the criteria we're operating under is where a minority dis-

trict can be created, we are under an obligation to do that.

"And one of the things we've tried to assure members of each community of is that we are going to adhere very closely to the tenets of the Voting Rights Act and the Supreme Court decisions and do our very best to assure that minority districts are not diluted and, where possible, the number of minority senators and representatives can be increased." Tilling, pp. 5-6. (Mansfield)

. . . the thrust of those Supreme Court decisions is that, where it is possible to draw a majority minority district--a little bit of an unusual term—for those of you not familiar with the process I'll explain it.

"Essentially that is a district where a minority group, whether it's black, Hispanic, language or other minority, can be a majority in a legislative district, State or city, county level. Where that can be done, the Court is mandating decision-makers to do that.

"So that is really a very clear obligation that that board is going to operate under. Furthermore, they are saying that, while they're very interested in not diluting minority voting representation, they're equally interested in expanding that influence where that is possible.

"So, as we look at plans, one of the top priorities of this Board is going to be follow the decision of the U.S. Supreme Court, not to dilute minority voting strength and, where possible, increasing that strength." Tilling, p. 8. (Dayton)

* * * *

[3] "The next thing we have to do really is not in the Ohio Constitution at all, but is really mandated by the decisions of the U.S. Supreme Court, and what they have said—and *this is really an ironclad rule that we have got to operate under—we've got to do everything in our power not to diminish the number of minority dis-*

tricts that are present. And if possible, if there is a way to increase those, we have to try and find that." Tilling, p. 13. (Cambridge) (emphasis added)

"In a whole series of court decisions the operating rules that we are governed by have been set down and effectively I summarize that it's very simple. You can't dilute black or other minority voting strength and if possible you must work to enhance." Tilling, p. 10. (Canton)

"The Supreme Court decisions have made it very clear that those persons designing legislative or city council or any districts, for that matter, that involve minority representation, those decision-makers are under an obligation to not dilute minority voting strength and in fact, where possible, they are instructed to try and increase minority voting strength." Tilling, p. 10. (Chardon)

[4] "The first area of court cases is very clear and involves minority voting rights, particularly what are called the creation of majority/minority districts, that is, districts where a minority group can, in fact, be made a majority in a legislative district. And the court directive that we are bound to follow is that there can be no deletion of minority voting strength. There've been a whole series of cases documenting this point and it is crystal clear and direct." Tilling, p. 8. (Strongsville)

". . . the mandate out there for policymakers to operate under is absolutely crystal clear, and the guideline that we as an Apportionment Board must follow is there can be no dissolution of minority voting strength, that *the number of minority districts must be maintained and where possible, they must be increased, and that's very simple; doesn't take a genius to figure it out. It's black and white. It's clear.* That's the mandate we're operating under." Tilling, pp. 10-11. (Columbus 2) (emphasis added)

". . . the members of the board, majority and minority alike, are under a court mandate to protect minority voting districts.

"And in fact the decision that we are operating under is that minority voting districts cannot be diluted and where possible must be increased." Tilling, p. 25. (Akron)

* * * *

"The specific direction provided to staff was to create representative districts which maximized the effective districts which maximized the effective representation of Ohio's significant ethnic and racial minorities." Aronoff, p. 91. (September Board Meeting)

* * * *

[5] THE "TOTALITY OF THE CIRCUMSTANCES

". . . we are not going to allow for the depletion of black districts. . . . The Court basically has set parameters of 51 to 65 percent for the development of majority-minority districts, but they have also made it clear that you must take into account local factors specific to each individual community so that in some communities, 51, 52, 53 percent might be very acceptable and you might be able to show by recourse to the record that that's a sufficient number in that district to elect minorities.

"In other districts, 65 might be necessary and in some rare cases you might go beyond that, as you indicated in your remarks, beyond that 65%." Tilling, pp. 45-46. (Toledo)

"As many of you in the audience may know, the Supreme Court has set some rough parameters that we can use ranging from 51 to 65 percent, but they've made it clear that those are only guidelines and that *the situation could vary from locality to locality and conceivably even*

could vary within one community, depending upon the demographic makeup or other factors, so the most important thing from your prospective—and we're working with other representatives of the NAACP in other cities around the state—is to let us know, and really you need to be as specific as possible in indicating what are, in your view, the requisite percentages so that we don't go over 65 percent unless there's some compelling reason to do so and do not go too low and, therefore, achieve something on paper which is not really accomplishable in reality." Tilling, pp. 28-29. (Columbus 1) (emphasis added)

"But on the other hand, they're very strict admonitions agaist trying to pack all minorities into a single district under the guise of creating a majority district. That is also not allowed. And so there's a relatively narrow range available to members of the Apportionment Board in which they can draw majority-minority districts.

"And what's important, and one of the reasons that we need hearings like this around the state is, *that the acceptable percentage may vary from city to city because it does involve past examples of discrimination.* It involves popularity of individual candidates. And so while in one city you might be able to draw majority district, or a candidate can win with 55% black voters, in another city it might take 61 or 62." Tilling, p. 9. (Cleveland) (emphasis added)

* * * *

[6] "*We need to establish for the record and totality of the circumstance in each urban area in order for us to do our job correctly*, so we need your help and we need the help of other minority communities around the state, but that is our interpretation of the *Armour* case and the Voting Right[s] Act as well, so I appreciate very much your comments." Tilling, p. 33. (Columbus 2) (emphasis added)

"I'm also counsel to the Republican party, and all around the country there has been alleged to have been

a conspiracy of Republicans and minorities to make more minority districts to make more Republican districts. That is in part true, but I must tell those of you in the African-American community that the political reason has more to do with Hispanic members around the country than even the African-Americans." Strauss, p. 85. (Columbus 21)

* * * *

[BRIEF OF PLAINTIFFS IN RESPONSE TO THE FEBRUARY 19, 1992 FILING OF DEFENDANTS: FILED MARCH 6, 1992) (part)]
[Docket #160]

[caption omitted]

I. *INTRODUCTION*

This Court was very explicit in its Opinion and Order, Opinion, Jan. 31, 1992, *Quilter v. Voinovich*, No. 91-CV-2219 (N.D. Ohio) (hereinafter "Opinion"), when it said, "[a]ccordingly, the Board is ORDERED to reconsider the [1991] Plan." Opinion, p. 16. The Court's additional statement, "unless it [the Board] can show justification under the totality of the circumstances test for the present configuration, the Board must submit a revised plan to this court within 20 days of the date of this order." The Court's further admonition that a failure to either show justification or submit a revised plan would result in the Court dealing with this matter "*sua sponte*," was also unambigouous. (Opinion, p. 16).

When the Board filed its response on February 19, 1992, it purported to submit the necessary additional "totality of the

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[11] population." Board Finding No. 69, page 25. No "totalities" showing was supplied to the Court. The previous district represented by minority Representative Jones was 72% Democratic; it is now 83% Democratic.[12]

As the Affidavit of Robert Dykes shows in greater detail, all of the foregoing urban areas where the Board ignored the Section 7 mandates of the Ohio Constitution in the name of an asserted "compliance" with the Voting Rights Act.

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[12] Exhibit 4 at p. 21, n. 1.

B. Tilling Testified That Changes in Black Population Figures Were Done on a Race-Conscious Basis

To underline the point that legislative boundaries were drawn on a race-conscious basis in the 1972 plan, Mr. Tilling testified before the Board that the reduction in black population percentages in the 1992 plan, while regrettable, was done to satisfy the regression analysis of Dr. Henderson (Plaintiffs' expert).[13] Tilling said that he reviewed Dr. Henderson's analysis of white crossover voting and then, applying his (Tilling's) judgment, adjusted the black population figures accordingly. To understand how profoundly Tilling misses the point, it is necessary to quote his own words at length.

> "Mr. Henderson provided data indicating what the white-over voter was in the minority districts outside of Cuyahoga County."
>
> [12] So, for example, in Districts 21 and 22 in Franklin County, he indicated what white cross-over vote was for Representatives Beatty and Miller. And we have examined that, and by his own documentation we have determined that Representative Beatty received 50 percent of the white cross-over vote, Representative Miller only 44.5 percent. And in my view certainly, and I would ask the Board to consider this, I believe that is a very significant finding of racially polarized black voting.
>
> Nonetheless, in making the changes that we have done, we have taken into account the fact that both Representatives Beatty and Miller have been elected, and we indicate that on this same chart that Mr. Henderson provided, *we were criticized for increasing the minority percentage in those two representatives' districts, and we are lowering that by these*

[13] Hearing, Feb. 18, 1992, pp. 60-61.

technical corrections by approximately 2 percent in Representative Beatty's district and 4 percent in Representative Miller's district. (Emphasis added.)

Excuse me. They still, however, are substantial minority districts with black population, black voting age population of 48.3 percent for Representative Beatty and 41, 40.98 percent for Representative Miller. *And I believe those minority populations and configuration of the districts will insure that black voters in those districts are able to elect a candidate of their choice.*" (Emphasis added.)[14]

Purporting to react to Dr. Henderson's analysis, Mr. Tilling, on behalf of the Board, applied the same method in Hamilton County, *i.e.*, without any "totalities" evaluation he arbitrarily reduced the 1991 plan's black population percentages for Representative Mallory by 10.6% and minority Representative Rankin's black population figures by 5.1%. Again, the nature of [13] the exercise engaged in by Tilling is best understood by reading Tilling's own testimony to the Board:

"In Hamilton County, where a great deal of the attention was focused during the court proceedings, Mr. Henderson's data show that Representatives Mallory and Rankin received approximately 51 percent of white cross-over voting, and we were criticized by the minority for increasing their black percentage even though the increases were approximately the same magnitude as the Democrats achieved in their own plan.

Nonetheless, taking this information into account, *we have reduced Representative Rankin's percentage in the direction that the Democrat minority has asked for by approximately 5.1 percent and in Representative Mallory's district we have reduced it by 10.6 percent.* (Emphasis added.)

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[14] Hearing, Feb. 18, 1992, pp. 60-61.

> What this means is that in terms of black voting age population, Representative Rankin's district still is 52.7 percent black voting age, and Representative Mallory's district is 43.1 percent black voting age, *and we believe again that this level is appropriate for black voters in those two districts to elect a candidate of their choice.*" (Emphasis added.)

Mr. Tilling's explanation for Montgomery County, where the Board again manipulated black population figures admittedly on a race-conscious basis, shows no consciousness of the necessity for a "totalities" evaluation:

> "In Montgomery County, again, this is a situation where Mr. Henderson has some data on cross-over that bear on this. In this particular case Rhine McLin gets by Mr. Henderson's calculations 35.4 percent of the white vote. Representative Roberts gets 46, essentially 46 percent, 45.98 percent.
> [14] Again, we were criticized for giving more minority voters to Representative McLin and taking them away from Representative Roberts. And we consulted here with members of the black community, and in particular Floyd Johnson, who is from Montgomery County, and the plan that is before the Board now reduces the number of black voters in Representative McLin's district by 10.8 percent and correspondingly increases the number of black voters in Representative Roberts' district by 8.3 percent.
>
> *Again, both of these changes are in line with the direction asked for by minority members of the Board.*" [15] (Emphasis added.)

Tilling also explained the 1992 changes in Summit County and Lucas County on the basis of race. As noted previously, in Summit County, minority Representative Sykes has enjoyed very substantial pluralities and high

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[15] *Id.* at 62-63.

white crossover vote. In Lucas County, minority Representatives Jones, in a district with 41.7% black population, received a plurality of 67.1% with white crossover vote of 44.4%; his average plurality in the years 1984-88 was 77.6%.[18] Tilling's testimony concerning these two counties was:

> "Looking at the figures produced by Mr. Henderson for Representative Sykes in Summit County and Representative Casey Jones, we found that both of them received less than 50 white cross-over vote, but we also examined the winning percentages in those two districts and we made virtually no change in Representative Sykes' district, and we reduced Representative Jones's percentage by only 1."

* * * *

[16] appears to be the true target of the Board. Tilling reveals his animus against this coalition in his following statement to the Board:

> "The other side of the minority's argument is that in every district where there are at least 13 percent black population, those districts always elect Democrats. And again that is also a fact. It's a fact because that has been the traditional technique used by Democratic map makers to solidify their control of legislative chambers. They split the minority community and use black voters as ballasts, and basically that is it, in order to support white incumbent Democrats.
>
> And the issue before this Board, which is inherent in the challenge of presenting the minority's case, is that you can in drawing fair districts maximize the opportunities for black voters to elect a candidate of their choice, or you can maximize the opportunities for white Democrats to retain control

[18] Exhibit 3.

> of the Ohio House of Representatives. But you can't do both." [19]

Tilling's logical fallacy here is criticizing two straw-men alternatives while ignoring the third lawful and legitimate choice, which is to follow the legal dictates of the Ohio Constitution and allow the black population figures to emerge naturally from that process. Indeed, the implicit admission by Tilling that he has drawn the lines to prevent Democrats from "splitting the minority community and using black voters as [17] ballasts" is an admission that the lines were drawn on a race-conscious basis for political purposes.[20]

III. THE BOARD HAS DRAWN BLACK DISTRICTS ON THE ASSUMPTION THAT PROPORTIONAL REPRESENTATION IS MANDATED

The goal of the Board appears to be to "guarantee" proportional legislative representation of black voters. The intent to achieve that guarantee is stated explicitly in Board Finding No. 168.

> "While there is a white crossover voting in the minority districts, except in districts in Cuyahoga County where the current black population in House Districts 12, 14 and 16 exceeds 70%, *there is insufficient black population in the minority districts to guarantee* the election of a black candidate particularly given levels of voter turnout and racial bloc voting in the district." (Emphasis supplied). *Id.* at p. 70.

[19] Hearing, February 18, 1992 at pp. 66-67.

[20] Mr. Tilling disagrees with both the *Quilter* majority and the minority opinion. His view is that the Board must "maximize" the black vote by creating majority-minority districts wherever possible. The dissenting opinion suggests that the maximization of the black vote is the goal of those who could prevent mandatory black majority districts.

The majority members of this Court, in *Armour v. Ohio*, 775 F. Supp. 1044 (N.D. Ohio 1991), said that the issue in voting rights cases is not guaranteeing the election of black candidates but assuring the ability of the protected class to participate equally in the political process and to elect a candidate of their choice. "The issue is not whether the plaintiffs can elect a black candidate, but rather whether they can elect a *candidate* [18] *of choice.*" (Emphasis in original). *Armour* Opinion, p. 33. In this regard, the key determinants are whether legally significant racial bloc voting exists such that it has usually prevented minorities from electing candidates of their choice, or whether black voters have had "*sustained* success" in electing candidates of their choice. *Thornburg v. Gingles*, 476 U.S. 30, 77, 106 S. Ct. 2752, 2780 (1986); *Quilter* Opinion, pp. 12-14.

A. Unless Legally Significant Racial Bloc Voting is Present, a Critical Element of the "Totalities" Test is Missing

Unless white crossover vote is insignificant and the remaining white voters vote as a bloc to prevent the minority candidate of choice from being elected, there is no "legally significant" racial bloc voting.[21] However, even in the absence of a record of legally significant racial bloc voting, the Board maintains that there must be black populations in the reconfigured districts sufficient to "guarantee" the election of black candidates, including non-incumbent candidates. In other words, the Board justifies its boundaries on the grounds that it is creating "safe" black seats. For example, Board Finding No. 183 states:

> "Since Representative Mallory is in his 60's, there is a particular need to reconfigure House District 23

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[21] *Gingles*, 476 U.S. at 55-57, 106 S. Ct. at 2768, 2769. Notably, neither Mr. Tilling nor the Board expert, Dr. King, ever use the term "legally significant" to describe the racial bloc voting which they find no prevalent in Ohio.

> to increase the relative [19] percentage of black population in that district in order to provide an opportunity for a new black candidate, without benefit of incumbency, to be elected in the district." *Id.* at p. 82.

Similarly, Board Finding No. 187 states that in increasing the black population in minority Representative Rankin's district, Tilling adopted the rationale that Representative Rankin may not be a representative in Hamilton County through the year 2000; hence, increasing black population in her district gives "an opportunity for the next generation of blacks who might want to seek office in Ohio Legislator." [sic] Board Finding No. 186, p. 84. Tilling referred to Representative Rankin's black population falling "dangerously low and possibly jeopardize her chances for re-election." Board Finding No. 193, p. 91. In this same vein, with respect to Representative Sykes' district in Summit County, Tilling said, "[s]o we did try to prevent a black voter dilution by returning the minortiy community to Representative Sykes." Board Finding No. 194, p. 92.

In summary, instead of adhering to the clear messages of *Gingles*, *Armour* and *Quilter*, the Board has clamorously insisted that it had a mandate in the absence of "totalities" proof to "guarantee" proportional representation.

B. The Absence of Legally Significant Racial Bloc Voting

This Court made it clear that the aggregation of blacks into majority, minority districts in the name of compliance with * * *

**[Exhibit 1 (part) to
Brief of Plaintiffs in Response to the February 19, 1992
Filing of Defenants: filed March 6, 1992]**

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 5:91CV-2219

JUDGE NATHANIEL R. JONES
JUDGE JOHN W. PECK
JUDGE DAVID D. DOWD, JR.

BARNEY QUILTER, *et al.*,
Plaintiffs,

vs.

GEORGE V. VOINOVITCH, *et al.*,
Defendants.

AFFIDAVIT OF ROBERT R. DYKES

STATE OF OHIO)
) ss:
COUNTY OF CUYAHOGA)

I, ROBERT R. DYKES, do hereby depose and state:

BACKGROUND QUALIFICATIONS OF ROBERT R. DYKES

1. My name is Robert R. Dykes and I reside at 16711 Lake Avenue in the City of Lakewood in Cuyahoga County. I am the President of Decision Research Cor-

poration and my business address is 1100 Statler Office Tower, Cleveland, Ohio 44115. I make this affidavit of my own personal knowledge.

2. I was born and raised in Cleveland. I have lived in Cuyahoga County all of my life except for about four years during which I lived in Columbus.

3. I graduated from John Adams High School in Cleveland. In 1960 I received a Bachelor of Science Degree in Physics from Case Institute of Technology (before it merged with Western Reserve University).

4. Upon graduation from Case I was employed by the then BF Goodrich Company in their corporate research center in Brecksville. At BF Goodrich I worked on a number of industrial research projects that involved the use of computers. At that time (the early 1960's), computers were beginning to play an important role in an increasing number of industrial research projects. After several years, the research center obtained its own on-site computer, and I was placed in charge of the newly formed research computer group.

5. In 1969 I left BF Goodrich to work for the City of Cleveland. At that time Cleveland had a large federal research grant and I was hired to be the Information Systems Officer of the Community Development Improvement Program. In 1971 I became the Director of that program. While at the City of Cleveland my group was responsible for maintaining and analyzing the 1970 census data for Cleveland.

6. In 1972 I went to work for the research department of the Greater Cleveland Growth Association as Information Systems Manager. At the Growth Association I was primarily responsible for responding to requests for data and information about Greater Cleveland from other staff members, companies interested in locating facilities here, and other organizations and individuals.

7. In 1973 I became the Research Director of the Ohio Democratic Party in Columbus, and was responsible for all of the research activities at the ODP.

8. In 1975 I formed Decision Research Corporation. Decision Research Corporation (DRC) is a full service market research company headquartered in Cleveland, Ohio. Decision Research conducts custom-designed market research and strategy development for diverse clients.

9. Upon its creation in 1975, DRC was involved primarily in political research for both ballot issues and candidates. It has since broadened its scope and expertise to include policy and planning studies in the public sector, communication and marketing studies for corporate and institutional clients, projects for public schools and colleges, and health care research.

10. DRC offers a full range of market research services including surveys (phone, in-person, mail), focus groups, Q studies, data base development, and computerized data analysis. DRC frequently provides ongoing consulting to its clients.

11. My experience with redistricting and reapportionment dates to 1971. At that time the City of Cleveland was a defendant in federal court with regard to the population disparity of its wards. Then Mayor Carl B. Stokes was also named as a defendant. At his request, and using the data from the 1970 census, I prepared a new ward plan for the city.

12. In 1981 my company, Decision Research Corporation, was retained by the Ohio Democratic Party to assist in the preparation of a new plan of apportionment for Ohio. That plan of apportionment was approved by a majority of the persons then responsible for apportionment. Decision Research Corporation also worked with the City Councils of Cleveland, Akron, Parma, and Barberton in 1981 in preparing plans for the redrawing of the ward boundaries for those cities.

13. In 1991 Decision Research Corporation was engaged by the Legislative Task Force on Redistricting and Reapportionment to work on the development of plans for both reapportionment and redistricting for Ohio. In addition, Decision Research Corporation was again engaged by the Cleveland City Council to provide assistance with regard to drawing new ward boundaries. We were also engaged by the City Councils of Akron and Parma to assist them in drawing new ward boundaries, and by the Summit County Council with regard to drawing the new County Council Districts as required by a recent charter amendment. On all of the redistricting and reapportionment projects undertaken by Decision Research Corporation I have acted as project director and principal researcher.

II. THE DEFENDANTS' 1992 PLAN VIOLATES ARTICLE XI, SECTION 7(D).

14. On page 11 of the Board Findings, the Defendants state that they complied with the requirements of Article XI, Section 7(D). Board Finding No. 34. On page 12 they say "the vast majority of the 1981 districts must be reconfigured because the population of such districts fails to satisfy Article XI, Section 3 of the Ohio Constitution." Board Finding No. 45. In fact, almost half (44 of 99) of the 1981 districts satisfy Article XI, Section 3. On page 14 they again say "[a]s a result of major population shifts within counties and from inner city to suburbs, the vast majority of the 1981 configured districts in all major urban areas had to be reconfigured to meet the population requirements of Article XI, Section 3 of the Ohio Constitution. Board Finding No. 52. That statement is not true.

15. In Cuyahoga County, Defendants show on page 15 that they are aware that five of the fourteen house districts created in 1981 (6, 7, [10], 13, 17) meet the population requirements of Article XI, Section 3. However,

they further state on page 17 that these same five districts ". . . cannot be retained intact given the population requirements of the other districts." That is not true.

16. The five districts (6, 7, 10, 13, 17) that meet the population requirements of Article XI, Section 3 are all contiguous with one another (see attached map A) along the western and southern border of Cuyahoga County. Retaining these five districts with their 1981 boundaries does not in any way prevent one from reconfiguring the remainder of Cuyahoga County.

17. The plan of apportionment submitted to the Apportionment Board on February 18 by the minority members retains these five house districts (6, 7, 10, 13, 17) intact with their 1981 boundaries and meets the requirements of the Ohio Constitution with regard to the districts in Cuyahoga County. Thus, the defendants violated Article XI, Section 7(D) five times in Cuyahoga County when there was no need to do so.

18. In Montgomery County. Defendants show on page 16 that they are aware that two of the five house districts created in 1981 and wholly contained within Montgomery County (H.D. 37 and H.D. 39) meet the population requirements of Article XI, Section 3. They further state on page 17 that these districts ". . . cannot be retained intact because of the population requirements of the other districts." Board Finding, p. 16. They are only half right.

19. Districts 37 and 38 combined span the entire breadth of Montgomery County from East to West. House Districts 36 and 38 are south of House Districts 37 and 39. Both House District 36 and House District 38 are above the maximum allowable population specified in Article XI, Section 3 and must lose population to another house district in Montgomery Country. But because of their geographic configuration House Districts 36 and 38 can only lose population to *either* House District 37 or

House District 39 (see attached map B). Thus, in drawing the 1991 plan of apportionment for Montgomery County, one much change *either* House District 37 *or* House District 39, but one need *not* change both of them.

20. The plan of apportionment submitted to the Apportionment Board on February 18, 1992, by the minority members retains House District 39 intact with its 1981 boundaries. Thus, the defendants violated Article XI, Section 7(D) in Montgomery County.

21. In Summit County, Defendants show on page 16 and on page 17 that they were aware that all four of the house districts (H.D.s 41, 42, 43, 44) wholly contained within Summit County meet the requirements of Article XI, Section 3. Yet they reconfigure all of these districts. Board Findings, p. 16. They give as their reason "to avoid splitting the black community in Summit County and to avoid minority voter dilution." No provision of the Ohio Constitution is cited for this reconfiguration.

22. The plan of apportionment submitted to the Apportionment Board on February 18, 1992, by the minority members maintains all four of these districts as they were in the 1981 plan. This is done without affecting any other districts in the state. Thus, the Defendants violated Article XI, Section 7(D) four times in Summit County.

23. In Hamilton County, the Defendants show on page 15 that they are aware that House District 22 (1981) meets the population requirements of Article XI, Section 3. Board Findings, p. 15. However, they further state on page 17 that "The remaining district (H.D. 22) cannot be retained intact because of the population requirements of the others districts." Board Findings, 53(b). That is not true.

24. The population of Hamilton County is very nearly equal to eight house of representative ratios. Hence, eight districts can be created wholly within Hamilton County. The population of H.D. 22 is only slightly below a house

of representatives ratio. This district can be retained without adversely affecting the other seven districts in Hamilton County. It is in the northwest part of the county and does not in any way restrict the reconfiguring of the remaining seven districts. Thus, the Defendants violated Article XI, Section 7(D) in Hamilton County.

25. The plan of apportionment submitted to the Apportionment Board on February 18, 1992, by the minority members does retain House District 22 intact with its 1981 boundaries and meets the requirements of the Ohio Constitution with regard to the house districts wholly within Hamilton County.

26. In Franklin County, Defendants show on page 16 that they were aware that two of the eight house districts created in 1981 (29 and 32) meet the population requirements of Article XI, Section 3. But on page 17 they state that these two districts ". . . cannot be retained intact because of the population requirements of the other districts." Board Findings, 53(d). That is not true.

27. The plan of apportionment submitted to the Apportionment Board on February 18, 1992 by the minority members does maintain House Districts 29 and 32 intact as they were in the 1981 plan, and meets the requirements of the Ohio Constitution with regard to the eight house districts wholly within Franklin County. Thus, the Defendants violated Article XI, Section 7(D) twice in Franklin County when there was no need to do so.

28. In Lucas County, Defendants show on page 16 that the populations of house districts 45 and 46 meet the requirements of Article XI, Section 3. The Defendants further state on page 18 that these two districts ". . . cannot be retained intact because of population requirements of other districts and to avoid minority voter dilution." Board Finding, 53(f).

29. The plan of apportionment submitted to the Apportionment Board on February 18, 1992 by the minority

members does maintain House Districts 45 and 46 as they were in the 1981 plan and meets the requirements of the Ohio Constitution with regard to the house districts wholly in Lucas County. The population of 1981 House District 47 is too low while the population of 1981 House District 48 is too high. By moving the appropriate population from H.D. 48 to H.D. 47 the populations can be balanced in accordance with the Ohio Constitution without affecting any other districts in the state. Hence, the Defendants are in error when they say that House Districts 45 and 46 cannot be retained because of population requirements. The Defendants violated Article XI, Section 7(D) twice in Lucas County when there was no need to do so.

III. THE DEFENDANTS 1992 PLAN VIOLATES SECTION 7(A) OF APTICLE XI

30. The Defendants have clearly misread Article XI of the Ohio Constitution with regard to the creation of whole county districts. On page 103 they cite Section 7(A) of Article XI which says in part ". . . the boundary line of districts shall be so drawn [*i.e.*, districts shall be created] as to delineate an area containing *one or more whole counties*." Board Finding, 242 (emphasis in original).

31. Note that Article XI, 7(A) refers to one or *more* whole counties. They further go on to say that . . . the creation of 'whole country districts is governed by Article XI, Sections 10(A) and 10(B)'" (page 104).

32. The Defendants assert the primacy of Section 10 of Article XI over Section 7 of Article XI. Yet the first paragraph of Section 10 states:

> "The standards prescribed in sections 3, 7, 8 and 9 of this Article shall govern the establishment of house of representative districts, which shall be created and numbered in the following order to the extent

that such order is consistent with the foregoing stands."

33. Clearly based on the wording of Article XI Section 10, it is subservient to the provisions of Section 3, 7, 8 and 9. Section 10 only sets out the order in which house districts are to be created. But even that ordering is conditional. In the words of Section 10, it is conditional ". . . to the extent that such order is consistent with the foregoing standards" (*i.e.*, Section, 3, 7, 8 and 9). In other words Section 10 states that you may change the order in which you create the districts if such a change more consistently meets the standards of Section 3, such a change more consistently meets the standards of Section 3, 7, 8 and 9.

34. Neither 10(A) or 10(B) of Article XI speak to districts that are *two or more* whole counties, as Section 7(A) does. Article XI, Section 7 clearly sets the standard and governs the creation of both *single* and *multiple* whole county districts.

35. What then is the purpose of Article XI, Section 10? Section 10 exists because the framers of Article XI were aware of the fundamentals of geography. To use an analogy they realized that drawing districts was like painting the floor of a room. If you were not careful you could paint yourself into a corner you could not get out of.

36. Let us start with Paragraphs (C) and (D) of Article XI, Section 10. Paragraph (C) says to create the house districts in the most populous counties before going on to those with less population. Suppose this procedure were reversed and (D) came before (C). Then it would be possible to combine all of the territory surrounding an urban county into districts before creating districts within that urban county. If the population of that urban county was not approximately equal to a whole number of districts, then there would be a fraction

of a district in the large urban county that could not be attached to any other territory. In effect, if paragraph (D) came before (C) you could indeed paint yourself into a corner.

37. Paragraphs 10(A) and 10(B) of Article XI give primacy to districts that are exactly *one* whole county. The drafters did not intend those counties used to fill out any remaining population when a large county has a fraction of a district left over and needs to add an adjoining territory from a adjoining county.

IV. THE SPLITTING OF LINCOLN HEIGHTS IN HAMILTON COUNTY

38. Lincoln Heights is a suburb in Hamilton County. It has a total population of 4,805. Lincoln Heights has a non-hispanic black population of 4,746 and is 98.77% black. In the plan of apportionment passed on Octiber 3, 1991, it was in House District 32 which was 23.90% black. District 36 was 4.47% black in the 1991 October plan adopted by the Board. In amendment "D" as passed by the Apportionment Board on February 18, 1992, Lincoln Heights was moved from the 32nd House District to the 36th House District. The black population percentages for these districts under the 1992 Board plan are 24.29% for House District 32 and 9.22% for House District 36.

V. THE EFFECT OF THE 1992 BOARD PLAN ON THE OHIO POPULATION

39. Total Population moved from one house district to another by Amendment "D" as passed by the Apportionment Board on February 18, 1992 is 554,291 people.

40. Total Non-Hispanic Black Population moved from one house district to another by Amendment "D" as passed by the Apportionment Board on February 18, 1992 is 95,423 people.

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Robert R. Dykes
ROBERT R. DYKES

Dated: March 5, 1992

* * * *

[Exhibit 2 to Brief of Plaintiffs in Response to the February 19, 1992 Filing of Defendants: filed March 6, 1992]

COMPARISON OF MINORITY HOUSE DISTRICTS IN 1981 DEMOCRAT PLAN, 7D PLAN, 1991 MAJORITY, AND 1991 MAJORITY AMENDMENT "D"

1981 PLAN DEMOCRAT		7D PLAN		1991 MAJORITY PLAN			1991 MAJORITY AMENDMENT "D"		
6-19 Cuyahoga		6-18 Cuyahoga [1]		8-20 Cuyahoga			8-20 Cuyahoga		
16—	94.67% [1]	16—	70.1%	10—	63.42% [2]	67.35% [1]	10—	63.42% [2]	67.35% [1]
14—	90.05%	14—	65.6%	12—	65.13%	67.25%	12—	65.13%	67.25%
12—	74.80%	12—	64.3%	8—	61.41%	65.64%	8—	61.41%	65.64%
15—	34.80%	11—	55.6%	9—	58.36%	62.30%	9—	58.36%	62.30%
*17—	26.14%	17—	26.0%	11—	40.61%	43.01%	11—	40.61%	43.01%
18—	14.70%	15—	19.1%	14—	6.86%	7.92%	14—	6.86%	7.92%
19—	14.40%	18—	11.1%	19—	3.71%	4.63%	19—	3.71%	4.63%
*13—	4.99%	13—	5.0%	15—	3.25%	3.29%	15—	3.25%	3.29%
11—	4.44%	9—	3.7%	17—	2.34%	2.85%	17—	2.34%	2.85%
9—	4.16%	7—	2.4%	13—	2.32%	2.75%	13—	2.32%	2.75%
* 7—	2.36%	8—	2.3%	18—	1.31%	1.41%	18—	1.31%	1.41%
8—	2.12%	10—	.6%	16—	0.45%	0.47%	16—	0.45%	0.47%
*10—	0.64%	6—	.5%	20—	0.23%	0.31%	20—	0.23%	0.31%
* 6—	0.49%								

[1] Black percentage of total population

[2] Black Voting Age Population

* Meets Population Requirements

1981 DEMOCRAT PLAN		7D PLAN		1991 MAJORITY PLAN			1991 MAJORITY AMENDMENT "D"	
28-35 Franklin		19-26 Franklin		21-29 Franklin			21-29 Franklin	
31—	46.80%	21—	46.2%	21—	50.30%	55.92%	21—	48.3% 54.3%
*29—	38.50%	19—	38.5%	22—	44.31%	48.29%	22—	40.98% 44.68%
*32—	26.60%	22—	26.6%	26—	8.07%	8.66%	26—	8.07% 8.66%
30—	12.40%	20—	11.2%	25—	7.96%	8.41%	25—	7.96% 8.41%
28—	5.90%	26—	6.2%	23—	7.78%	8.32%	23—	8.95% 9.79%
34—	5.10%	24—	4.8%	29—	4.47%	4.32%	29—	4.47% 4.32%
33—	4.10%	23—	4.3%	24—	3.92%	4.22%	24—	3.92% 4.22%
35—	1.40%	25—	2.3%	28—	3.56%	3.75%	28—	3.56% 3.75%
				27—	3.09%	3.57%	27—	3.09% 3.57%
20-27 Hamilton		27-34 Hamilton		30-37 Hamilton			30-37 Hamilton	
25—	53.20%	28—	60.9%	30—	56.83%	61.07%	30—	52.72% 55.98%
23—	45.90%	33—	47.1%	31—	52.60%	59.82%	31—	43.13% 49.16%
24—	32.30%	34—	26.4%	32—	21.58%	24.00%	32—	20.76% 24.41%
22—	12.60%	31—	13.7%	35—	7.91%	8.96%	35—	8.97% 10.14%
27—	12.20%	32—	12.6%	33—	7.50%	8.04%	33—	11.84% 15.38%
20—	8.90%	27—	3.6%	36—	4.08%	4.49%	36—	4.08% 4.49%
21—	7.50%	30—	2.7%	37—	1.94%	2.14%	37—	1.94% 2.14%
26—	2.70%	29—	2.5%	34—	1.90%	2.14%	34—	1.90% 2.14%
36-40 Montgomery		35-39 Montgomery		38-43 Montgomery			38-43 Montgomery	
36—	42.10%	36—	43.7%	38—	50.70%	54.78%	38—	40.1% 43.50%
*37—	36.10%	37—	40.0%	39—	29.23%	32.35%	39—	38.28% 41.69%
40—	6.20%	39—	4.7%	43—	3.61%	3.86%	43—	3.61% 3.86%

*39—	4.70%	35—	2.5%	40—	2.84%	3.30%	40— 2.84% 3.30%
38—	0.91%	38—	.9%	42—	2.28%	2.76%	42— 2.28% 2.76%
				41—	1.18%	1.31%	41— 1.18% 1.31%
41-44 Summit		40-43 Summit		44-48 Summit			44-48 Summit
*42—	35.40%	42—	35.2%	44—	39.52%	43.26%	44— 39.86% 43.07%
*44—	9.00%	40—	9.0%	45—	5.40%	6.29%	45— 5.40% 6.29%
*43—	2.90%	43—	2.9%	47—	5.00%	6.00%	47— 5.00% 6.00%
*41—	2.30%	41—	2.3%	46—	1.12%	1.33%	46— 1.12% 1.33%
				48—	0.61%	0.53%	48— 0.61% 0.53%
45-48 Lucas		44-47 Lucas		49-52 Lucas			49-52 Lucas
*45—	41.70%	45—	41.70%	49—	47.65%	50.92%	49— 46.42% 49.9%
47—	13.20%	47—	12.3%	52—	4.85%	5.65%	52— 4.85% 5.65%
*46—	5.30%	46—	5.3%	50—	4.23%	5.46%	50— 4.23% 5.46%
48—	2.80%	44—	2.8%	51—	2.18%	2.40%	51— 2.18% 2.40%
49-51 Stark				54-57 Stark			54-57 Stark
50—	14.90%			54—	12.93%	15.15%	54— 12.93% 15.15%
49—	4.43%			55—	3.39%	3.84%	55— 3.39% 3.84%
51—	1.30%			57—	2.64%	2.98%	57— 2.64% 2.98%
				56—	1.15%	1.20%	56— 1.15% 1.20%
52-53 Mahoning				64-65 Mahoning			64-65 Mahoning
53—	27.80%			64—	31.19%	35.53%	64— 31.19% 35.53%
52—	10.50%			65—	1.48%	1.64%	65— 1.48% 1.64%

Total (Minority Districts Over 10%)		
24	16	16
Total (Minority-Majority (Over 50%))		
4	8	9

[Exhibit 3 to Brief of Plaintiffs in Response to the February 19, 1992 Filing of Defendants: filed March 6, 1992]

CHART 1

SUMMARY CHART SHOWING PACKING OF DISTRICTS OF MINORITY REPRESENTATIVES ELECTED WITH HIGH CROSSOVER VOTING

District [5]	Minority Rep. (Terms)[5]	White Crossover Vote (%) from Democrats (D)[4] and Republicans (R)	Winning Candidates' [3] % of Vote (1990)	Winning Candidates' [1] Avg. % of Vote For Contests 1984-88	Black Population % [2] 1981 Plan	1991 Plan	% Change
12	T. James(13)	63.71(D)	86.69	88.89	74.8	67.0	−7.8
14	C. Prentiss(1)	51.65(D)	88.61	N/A	90.1	65.4	−24.5
16	V. Whalen(4)	67.55(D)	92.82	100	94.6	67.0	−27.6
23	W. Mallory(13)	50.66(D)	70.47	69.65	45.9	59.6	+13.8
25	H. Rankin(8)	50.93(D)	73.37	71.00	53.2	60.9	+7.7
29	R. Miller(6)	44.50(D)	67.91	68.27	38.5	48.0[6]	+9.5
31	O. Beatty(7)	50.25(D)	71.55	71.27	46.8	55.7[6]	+8.9
36	R. McLin(2)	35.44(D)	64.88	66.80	42.1	54.6	+12.5
37	T. Roberts(4)	45.98(D)	64.48	63.94	36.1	32.2	−3.9
42	V. Sykes(5)	48.76(D)	65.49	67.52	35.2	43.0	+7.6
45	C. Jones(12)	44.46(D)	67.12	72.64	41.7	50.6	+8.3

[1] Base information taken from Henderson Deposition Exhibit 4. Average percentage of vote for winning candidates calculated by dividing the sum of winning vote percentage by the number successful contests for the named representative (*e.g.*, T. James: ((1988 - 88.86) + (1986 - 89.27) + (1984 - 88.54)) divided by 3).

[2] Information taken from Dykes Deposition Exhibit 20, p. 3.

[3] Information taken from Henderson Deposition Exhibit 4.

[4] Information taken from Henderson Deposition Exhibit 3 ("Voting in the 1990 General Election for House Candidates in the 11 Districts Represented by Blacks.")

[5] Information taken from Henderson Deposition Exhibit 5.

[6] Dykes Deposition Exhibit 20, p. 3 transposes the 1991 percentage black electorate for Representatives Miller and Beatty. The transportation is corrected on this chart.

[Exhibit 1 (part) to Brief of Plaintiffs in Response to the February 19, 1992 Filing of Defendants: filed March 6, 1992]

AFFIDAVIT OF GORDON G. HENDERSON

STATE OF INDIANA
COUNTY OF WAYNE

I

I am the same Gordon G. Henderson residing at 220 South 19th Street in Richmond, Indiana, who has previously prepared affidavits for this cause and who testified at the hearing in Cincinnati in January, 1992. An up-to-date curriculum vitae accompanies this affidavit. See Appendix A attached.

II

Henderson position on creating majority-minority districts

Defendants' findings of fact (#83, page 32) states: "Mr. Henderson's position is that an apportioning body must create majority-minority districts whenever possible . . . ." I have not taken that position in this cause. Indeed, I have never taken that position in any of the voting rights cases in which I have participated. To the contrary, my position has consistently been that in deciding what percent a minority population must be in a particular district in order for that minority population to have an opportunity to elect representatives of its choice, one must look at one or more of the following: (A) The extent to which voting in the jurisdiction is racially polarized; (B) the extent to which the minority population is cohesive in voting; (C) the extent to which candidates of choice of minority voters are supported by voters who are in the racial/ethnic majority; and when appropriate (D) the general level of registration evident among minority persons; and (E) the general level of turnout evident

among minority voters. I subscribe to the Brace-Grofman-Handley-Niemi proposition that the percent which minority persons/voters must be within a district is case specific, that sometimes data such as that I have just identified when examined will indicate that the percent should be above fifty but that sometimes that data will indicate that the percent should be well below fifty. See Kimball Brace, Bernard Grofman, Lisa Handley and Richard Niemi, "Minority Voting Equality: The 65 Percent Rule in Theory and Practice," Law and Policy, Vol. 10, No. 1, January, 1988, 43-62. Further I have stated my concurrence with the Brace-Grofman-Handley-Niemi proposition in numerous voting rights cases. Never once have I stated as a universal rule that those who draw redistricting plans must create majority-minority districts whenever possible.

III.

Gary King's unique definition of racially polarized voting

Gary King has worked up his own definition of racially polarized voting. Not only is it unique to him; it is also self-serving.

He first defined it at the time he gave a deposition on December 13, 1991. In response to the question "What is racial bloc or racial polarized voting?" here is how he defined racially polarized voting as reported at the top of page 40 of the transcript of that deposition:

> A. It is what happens at the end of the individual level, voter level, if black voters vote for certain candidates more frequently than white voters do. And we would call that racially polarized voting.

At the top of page 41 he clarified the definition saying:

> A. The third column is what is central here, and that is *the proportion of blacks who vote for Democrats minus the proportion of whites who vote for Democrats. If this is a positive number then there*

is some degree of racially polarized voting. (Underlining added.)

Therefore: If 99% of blacks vote for the Democratic candidate Jones, and 98% of whites vote for the same Democratic candidate Jones, since 99 minus 98 yields a positive number this is evidence of some degree of racially polarized voting.

It requires no more than common sense to realize that to so define racially polarized voting is absurd.

Under this definition, the only election in which one would not find racially polarized voting would be an election in which precisely identical percentages of every racial ethnic subpopulation voted for the Democratic candidate. If one were to accept this definition of racially polarized voting, it is possible that the only election in this country in which one would not find racially polarized voting would be an election held in a jurisdiction in which all persons voters were of the same race or ethnicity.

Defendants assert that King analyzed 200 Ohio elections and found racially polarized voting in every one of them. Had he analyzed 10,200 Ohio elections, given his definition, King would probably have found racially polarized voting in every one of the other ten thousand too.

But does the transcript of his deposition accurately reflect King's definition? It does.

On pages 69, 70 and 71, he once again repeated his belief that racial bloc voting exists whenever a different proportion of whites than blacks vote for a Democratic candidate. Excerpts from the three pages follow:

[Page 69.] I wanted to figure out the proportion of blacks voting for Democrats minus the proportion of whites voting for democrats. And that is the percentage presented here.

[Page 69]. One can see very clearly the proportion of whites voting for Democrats is less than the

> proportion of blacks voting for Democrats in every single district I analyzed.

Since *any* difference in the proportion of whites and blacks voting for the Democratic candidate is evidence, according to King's definition, of racial bloc voting, can anyone be surprised that King discovered evidence of racial bloc voting in every election he analyzed? Can anyone seriously doubt that one will rarely if ever find an election anywhere in this country where the exact same proportion of blacks and whites are voting for the same candidate? Yet, unless the exact same proportion of blacks and whites vote for the same candidate, then that is evidence of racial bloc voting according to King, even if a solid majority of whites and blacks are voting for the same candidate and even if that candidate wins in a landslide.

> [Page 71]. Counsel asked for racially polarized voting and this is what I took it to mean precisely. Blacks are voting for Democrats more than whites are voting for Democrats. So blacks prefer different candidates than whites do. It happens in every case here.

In the statement he delivered at the time of his appearance before the Reapportionment Board on February 11, King repeated his definition, saying at page 48 of the transcript made of his statement:

> The column labeled whites is an estimate of the proportion of whites who vote for the black Democratic incumbent in state House races averaged over all of the incumbents. And as you can see, in 1984, that's 56.76 percent. In the same year, the average over the same districts, the proportion of support for the black incumbent candidates among black citizens is about 95 percent. The differences between those figures is racial bloc voting.

IV

The Grofman/Thornburg definition of racially polarized voting

I am generally familiar with the work, the analyses and the testimony of the following academicians and practitioners who have testified on behalf of plaintiffs and defendants in literally hundreds of voting rights cases: Doctors Robert Brischetto, Richard Engstrom, Bernard Grofman, Jerry Himelstein, Morgan Kousser, Allan Lichtman, James Loewen, Harold Stanley, and Genie Stowers, and Messrs. Kimball Brace and Thomas Hoefflller. None of them uses a definition of racially polarized voting that even remotely resembles that used by King. Their definition instead is that used by Bernard Grofman, plaintiff's expert in *Gingles v. Edmisten*, and approved by the U.S. Supreme Court in *Thornburg v. Gingles*.

That definition finds evidence of racially polarized voting only when a majority (or the greatest number) of white votes against the candidate of choice of a majority (or the greatest number) of blacks so as to defeat the candidate of choice of black voters.

An election in which a majority of whites voted for a black candidate of choice along with a majority of blacks would qualify under the Grofman/Thornburg definition as the very opposite of racially polarized voting.

In "The 'Totality of Circumstances Test' in Section 2 of the 1982 Extension of the Voting Rights Act: A Social Science Perspective," in *Law & Policy*, Vol. 7, No. 2, April, 1985, Grofman whites (page 207):

> We propose to define *racial polarization* as being *substantively significant* if it is of sufficient magnitude that the racial composition of the electorate can affect the candidate(s) chosen, a definition that was accepted by the trial court in *Gingles*. Thus, for example, in a two-candidate race if 80% of black

voters vote for candidate A and 55% of white votes also do so, this would not be counted as substantively significant racial polarization as we have defined that term, because voters of both races would choose the same candidate. [Emphasis in original]

V

Henderson Thornburg-style analyses of 1986, 1988 and 1990 House of Representatives elections

I have done a bivariate regression and homogeneous precinct analysis for elections to seats in the Ohio House of Representatives in those six districts which elected the candidates of choice of Black voters in the 1986 and 1988 general elections and in which there were two candidates. The procedure I used is identical in every detail to that used by Bernard Grofman, plaintiff's expert witness in *Gingles* v. *Edmisten*, whose work was accepted by the District Court and by the U.S. Supreme Court as well as may be seen from a reading of that court's opinion in *Thornburg* v. *Gingles*. The results of those analyses follow:

	% of Votes Cast by White Voters for Candidate or Choice of Black Voters		% of Votes Cast by Black Voters for Candidate of Choice of Black Voters	
	Bivariate Regression Analysis	Homogenous Precinct Analysis	Bivariate Regression Analysis	Homogenous Precinct Analysis
1986:				
District 12	66.06	NA	95.65	05.59
District 23	45.73	NA	100.06[1]	95.31
District 29	47.11	NA	103.47	96.39
District 31	50.61	NA	98.92	95.11
District 42	44.63	NA	108.41	95.57
District 45	60.86	NA	93.58	90.82
1988:				
District 12	63.91	NA	95.67	95.67
District 23	43.08	NA	102.64	96.29
District 29	45.75	NA	105.00	97.12
District 31	53.34	NA	100.20	97.35
District 42	39.63	NA	111.05	95.70
District 45	57.17	NA	97.49	95.42

[1] Bivariate regression will generate estimates of the percentage of the vote received by a candidate that are greater than 100 whenever turnout by African-American voters is markedly greater than turnout by whites, or vice-versa. This is not considered a problem by those who use bivariate regression to analyze racially polarized voting. *See*, Bernard Grofman and James Loewen, "Recent Developments in Methods Used in Vote Dilution Litigation," *The Urban Lawyer*, Vol. 21, No. 3 (Summer, 1989), pp. 589-604.

By King's definition every one of these elections would be evidence of racially polarized voting since different proportions of blacks and whites are voting for the same candidates.

By the Grofman/Thornburg definition, not one of these elections would be evidence of racially polarized voting since even when a majority of white voters voted against

the candidate of choice of black voters, the candidates of choice of black voters still won.

I have also done an analysis of voting in the 1990 general election for seats in the Ohio House of Representatives for those eleven districts represented by African-American persons with the following results;

Voting in the 1990 General Election
for House Candidates in the 11 Districts
Represented by Blacks

Party of Candidates	Total Vote	in Black Precincts	from Black Voters	in White Precincts	from White Voters
District 12	13644				
Democrat	11969	94.41	94.79	66.66	63.71
Republican	1675	5.59	5.21	33.33	36.29
Turnout: 20.80% White					
25.87% Black					
District 14	17959				
Democrat	16830	96.65	97.83	57.55	51.65
Republican	1129	3.35	2.17	42.45	48.35
Turnout: 22.51% White					
28.33% Black					
District 16	23153				
Democrat	21584	93.87	94.36	68.34	67.55
Republican	1569	6.13	5.64	31.66	32.45
Turnout: 26.11% White					
34.30% Black					
District 23	20135				
Democrat	14190	94.70	101.09	57.23	50.66
Republican	5945	5.30	−1.09	42.77	49.34
Turnout: 28.23% White					
12.63% Black					
District 25	20381				
Democrat	21556	94.55	98.83	50.93	50.93
Republican	7825	5.45	1.17	49.07	49.07
Turnout: 41.02% White					
36.10% Black					

Party of Candidates		Total Vote	in Black Pre-cincts	from Black Voters	in White Pre-cincts	from White Voters
District 29		22985				
Democrat		15683	94.24	103.42	51.00	44.50
Republican		7302	5.76	−3.42	49.00	55.50
Turnout:	28.16%	White				
	34.36%	Black				
District 31		23084				
Democrat		16635	95.46	102.17	53.08	50.25
Republican		6449	4.54	−2.17	46.92	49.75
Turnout:	33.05%	White				
	31.30%	Black				
District 36		28162				
Democrat		181129	97.69	101.35	36.57	35.44
Republican		10033	2.31	−1.35	63.43	64.56
Turnout:	31.13%	White				
	36.33%	Black				
District 37		23835				
Democrat		15406	94.55	101.39	47.70	45.98
Republican		8429	5.45	−1.39	52.30	54.02
Turnout:	29.26%	White				
	30.05%	Black				
District 42		29381				
Democrat		19238	95.69	109.63	48.79	48.76
Republican		10143	4.31	−9.63	51.21	51.24
Turnout:	40.22%	White				
	31.38%	Black				
District 45		21501				
Democrat		15536	92.78	97.62	45.41	44.46
Republican		5965	7.22	2.39	44.59	45.54
Turnout:	26.60%	White				
	29.53%	Black				

By King's definition every one of these elections would be evidence of racially polarized voting since different proportions of blacks and whites are voting for the same candidates.

By the Grofman/Thornburg definition, not one of these elections would be evidence of racially polarized voting since even when a majority of white voters voted against the candidate of choice of black voters, the candidates of choice of black voters still won.

VI

Defendants say that King performed a bivariate ecological regression analyses [*sic*] and determined that all the data indicated significant racially polarized voting. That is absurd. Not only does King use a definition of racially polarized voting that is substantially different from the rest of the profession, he does not use the standard regression procedure which received the imprimatur of the U.S. Supreme Court in its *Thornburg* opinion i.e. the two-equation method used by Bernard Grofman, plaintiffs expert in *Gingles* v. *Edmisten*, the same two-equation method I have used whenever I have been called upon to do an analysis of racially polarized voting including for this cause. There is no reason for King not to have used procedures and definitions identical to those used by Grofman for his analysis for *Gingles* except that had he done so King would necessarily have concluded, as I have, that far from finding extensive evidence of racial bloc voting in Ohio elections, one finds instead extensive evidence of the very opposite of racially polarized voting namely coalitional voting, voting in which a majority/plurality of the minority racial/ethnic group and a majority/plurality of the majority racial/ethnic group vote for the same candidate and that candidate wins.

Further, in using his single-equation method instead of the preferred two-equation method, King either is ignorant of or chooses to ignore well-known criticisms of

the single-equation method, criticisms that led Grofman in the *Gingles* to write ". . . it is best not to use this form of regression." See page 61 of Bernard Grofman, "An Outline for Racial Bloc Voting Analysis," a document prepared as an exhibit in *Gingles* v. *Edmisten* to explain the proper procedures to use to analyze racial bloc voting. This document is 71 pages long. Not to burden the court with such a lengthy document, I have xeroxed the cover page, the table of contents, and the three-page appendix in which the quotation from Grofman appears. See Appendix B attached. Grofman has since repeated his criticism of the single equation method in an article jointly authorized with James Loewen entitled "Recent Developments in Methods Used in Vote Dilution Litigation," *The Urban Lawyer*, Vol. 21, No. 3 (summer, 1989), pp. 589-604.

Were it not for his most peculiar choice of defintion for racially polarized voting, King would have arrived at a firm conclusion that elections in recent years in Ohio have exhibited clear evidence of coalitional voting. The results of King's analyses are presented in summary form in paragraph 167, pages 69-70 of defendants' findings of facts. Here is what that summary statement reports:

Average Proportion Voting For Black Incumbent State House Candidates Among

	Whites	Blacks
1984	56.76%	95.19%
1986	60.22%	95.48%
1988	67.88%	98.46%
1990	61.53%	95.69%

That summary shows that substantial majorities of both Whites and African-Americans voted for the same state house candidates in the years 1984, 1986, 1988 and 1990. King calls that racial bloc voting. It isn't.

VII

King's Seats-Votes Analysis

Gary King performed seats-votes analyses and concluded that the proposed Republican plans of 1991 and 1992 are fair. Even if that were true, that fact alone could never excuse or justify racial gerrymandering.

A seats-votes analysis can help determine whether the number of seats in a legislative body held by each political party fairly reflects the strength of support enjoyed by each political party in the electorate, or whether instead the number of seats in a legislative body held by one of the political parties seriously distorts the strength of support enjoyed by that party in the electorate.

It is readily conceivable that a seats votes analysis might show that the proportion of seats held by one political party in a legislative body reflected very closely that party's support within the electorate. Yet that same plan might reveal a flagrant racial gerrymandering.

Indeed a plan might be drawn which would meet all relevant standards for judging a plan—including the principles of one person one vote, compactness and contiguity—and pass muster under a seats votes analysis, and still constitute a flagrant racial gerrymander.

How could that be? Districts with populations very close to if not exactly at the norm or ideal population of a district, districts perfectly square in shape, districts whose boundaries might be drawn with a single unbroken line, could be drawn in the midst of the African-American population concentrations in the urban areas in which African-Americans were more than ninety percent of the population. And even if a seats votes analysis indicated that the proportion of seats held by each political party in the legislative body fairly reflected each party's strength in the electorate, that packing of African-American voting strength would still constitute clearcut evidence of a racial gerrymander.

Similarly compact, contiguous districts with populations very close to if not at the norm could be drawn that severely cracked or fragmented African-American population concentrations in the urban areas. And again a seats votes analysis might well indicate that the strength of each political party as reflected in the proportion of seats held by each in the legislature closely mirrored the strength of each within the electorate, but one would still have to conclude that fragmenting African-American voting strength in the urban areas was evidence that the plan created a racial gerrymander.

A seats votes analysis, in short, by itself can never indicate whether a plan includes districts that either pack or crack minority voting strength. A seats votes analysis is largely irrelevant to the question of whether or not a redistricting plan does or does not include racial gerrymanders, or does nor does not violate the Voting Rights Act.

VIII

The Egregious Racial Gerrymandering in Franklin County

The 1992 Republican Plan took eight districts in Franklin County in the 1981 plan—numbers 28, 29, 30, 31, 32, 33, 34 and 35—and distributed the populations of those eight districts among nine districts—numbers 21, 22, 23, 24, 25, 26, 27, 28 and 29.

In four of the eight districts in the 1981 plan African-Americans were more than ten percent of the population. In fact the percent of the population that was African-American in these districts was 12.42, 26.61, 38.49 and 46.79. All four districts voted for the Democratic candidate for the state House of Representatives in 1990. The Democratic candidate also carried district 33, in which African-Americans were 4.12% of the population. Analysis indicates that the candidate who won was the candidate of choice of African-American voters in all five districts.

In the 1992 Republican plan, only two of the nine districts have populations of which more than ten percent of the population is African-American. African-Americans are 44.45% and 54.05% of the populations of districts 21 and 22. And an examination of the results of the 1990 elections to the state House of Representatives in the nine new districts indicates the Democratic candidate would carry only three of the nine districts.

In short, the 1992 Republican Plan takes eight districts in the 1981 plan in four of which there were substantial numbers of African-Americans and five of which were carried handily by the Democratic candidate in the 1990 election for the state House of Representatives, and distributes the populations of these five districts across nine new districts in only two of which may be found substantial number of African-Americans and in only three of which does the Democratic candidate in the 1990 election to the state House of Representatives win.

In the process, African-American persons numbering 16769 who were in five of the eight districts in the 1981 plan which elected the candidate of choice of African-American voters have been dispersed among six of the new districts. In these six districts the African-American percent of the population is 3.32, 3.78, 3.94, 4.78, 7.96, and 9.24. In these six districts the percent of the vote received by the Democratic candidate for the state House of Representatives in 1990 was 33.65, 34.50, 38.16, 39.35, 41.10 and 41.25%. In short, this African-American population concentration of 16769 persons has been fractured. Under the 1981 plan they were able to elect the candidate of their choice. Under the 1992 Republican plan they cannot.

It is clear that in creating districts 21 and 22 in the 1992 Republican plan, more African-American voters were included in those districts than are needed to elect the candidate of choice of African-American voters and it is clear, therefore, that some of the African-American voters

included in the populations of districts 21 and 22 could have been joined with the African-American population concentration of 16769 persons dispersed among districts 24 through 29 to make at least one more district in which African-Americans could elect the candidate of their choice.

But are the 16769 African-American persons by themselves sufficient to elect their candiate of choice even if a district is made in which the total African-American population consists of only those 16769 persons?

The answer is yes.

16769 persons is equal to 15.30% of the norm—the population of a district with the ideal population of 108606 persons.

Eleven districts in the 1981 plan had populations of which African-Americans were at or near this percentage. They are listed below and for each of them the African-American percent of the district population and the percent of the vote received by the Democratic candidate for the Ohio house in 1990 are reported.

District Number	% of population African-American	% of Vote for winning House candidate 1990
1	11.15	31.58
18	14.72	74.61
19	14.36	58.27
22	12.62	43.11
27	12.64	34.25
30	12.42	71.04
47	13.23	76.06
50	14.88	58.47
52	10.48	79.64
59	12.82	76.31
62	11.35	53.52

As the litsing above shows, in the 1990 election to the state House of Representatives, the candidate of choice of African-American voters carried eight of the eleven districts. In the face of that evidence it seems quite reasonable to conclude that a district which included all of the 16769 African-American persons who are distributed among six districts in the 1992 Republican Plan would offer those 16769 African-American persons a reasonable opportunity to elect the candidate of their choice.

Therefore, to deny them that opportunity by dispersing their voting strength among six districts constitutes retrogression pure and simple, because they did have a chance before to elect the candidate of their choice, they did in fact elect the candidate of their choice, a district could have been drawn in which they would still have the opportunity to elect the candidate of their choice, but instead their voting strength has been fragmented and made worthless by being distrubuted among six different districts under the 1992 Republican plan.

How different is the 1992 plan from the 1991 plan? The difference is slight indeed. Under the 1991 plan 17740 African-American persons were moved out of districts in which they had been able to elect representatives of their choice into districts in which they could not. The figure for the 1992 plan, as noted already, is 16769. So the 1992 plan treats a total of 971 African-American persons more fairly than did the 1991 plan.

In summary: Packing of African-American persons has been employed in drawing districts 21 and 22 of the 1992 Republican plan, and cracking of African-American persons has been employed in drawing the remaining seven districts, most particularly six of the seven districts, districts 24 through 29 in the 1992 Republican plan. The result is retrogression of African-American voting strength, because under the 1992 Republican plan African-Americans are able to elect representatives of their choice in

fewer districts than they did in the 1981 plan, and further at least four districts might have been drawn in which African-Americans would have a reasonable opportunity to elect representatives of their choice.

Hamilton County: The "Effects" of the 1992 Plan are Substantially the Same as the 1991 Plan

In Hamilton County 46% and 53% black population districts were converted to 49% and 56% districts in the 1992 plan with the result that three majority Democratic districts would become two majority Democratic districts and with the further result that black voters are deprived of the opportunity to elect a representative of their choice not only in one of the three majority districts but also in the influence district which has disappeared.

IX

How Miniscule are the Differences Between the 1991 and 1992 Republican Plans: The Districts of Lucas County as a Case In Point

Here follows a listing which shows the percent of the population that is African-American and the share of the vote won by the Democratic candidate for the Ohio House of Representatives in 1990 for the districts in the 1991 and 1992 Republican Plans.[2]

[2] In Lucas County a 42% 1981 black population district was made into a 50% district. That district was 72% Democratic under the 1981 plan; it is now 83% percent Democratic. Similarly, in Summit County, a 35% black population district was made into a 43% black population district. That district was 67 percent Democratic; it is now 73% Democratic.

Districts in Lucas County

Republican Plan 1991			Republican Plan 1992		
District No.	% of population that is Black	% of vote won by Democrat House candidate 1990	District No.	% of population that is Black	% of vote won by Democrat House candidate 1990
49	50.56%	84.59%	49	49.62%	82.59%
50	5.37%	69.40%	50	6.11%	70.05%
51	2.36%	43.66%	51	2.31%	45.47%
52	5.68%	54.12%	52	5.11%	52.09%

Across the four districts, the differences between the percent of the district population that is African-American are .94%, .74%, .05% and .57%, differences in other words, that range from a low of five one hundredths of one percent to a high of 94 one hundredths of one percent, a slight difference indeed. On the score of the percent of the vote won by the Democratic House candidate in 1990 —where considerable variation is possible even among districts in which the percent of the population that is African-American is roughly the same—the differences range from a low of one half of one percent to a high of two percent, once more slight differences indeed. In short the same unnecessary packing and cracking evident in the 1991 plan is equally in evidence in the 1992 plan and at almost identical levels in the two plans in the same proposed districts.

X

Montgomery County districts in the 1992 Plan

As was true for Lucas County, so is it with Montgomery County: The treatment accorded districts in Montgomery County is virtually the same in both the 1991 and 1992 plans.

In districts 36 and 37 in Montgomery County before the 1991 redistricting, African-Americans were 42.07% and 36.13% of the district populations. In the 1991 plan, these two districts were made into districts in which African-Americans were 54.59% and 32.23% of the population. In the 1992 plan, these two districts were made into districts in which African-Americans are 44.35% and 40.51% of the population. In other words, the African-American percent of the population of one district in the 1991 plan was reduced by ten percent by the 1992 plan but the African-American percent of the population of the other district was increased by nine percent. That still constitutes packing.

Before the 1991 redistricting, there were three safe Democratic seats. In both the 1091 and 1992 plans, there are two safe Democratic seats. Before the 1991 redistricting, the populations of two of the seats were a mix such that the Democratic candidate for those seats in 1990 won sixty-four and sixty-five percent of the vote. The 1991 plan made the population mix such that the percent of the vote won by the Democratic candidates for those two seats is ninety and seventy percent. In the 1992 plan, the comparable percent figures are eighty-four and seventy-two. In both the 1991 and 1992 plans, in other words, the populations of the old districts have been carefully distributed in such a way as to pack both African-Americans and non-African-American Democrats into the same districts thereby reducing from three to two the number of Democratic-leaning districts in Montgomery County.

Finally, what was done to what was district 39 in Montgomery before redistricting is particularly noteworthy. Old district 39 was the safest of all Democratic-leaning districts in Montgomery County. In 1990 the Democratic candidate received 75.38% of the vote in the general election. Yet the percent of the district's population that was African-American was relatively low: 4.69%. Its total population of 106280 meant it might have

remained intact as a district in any new plan. But in the 1991 it was instead broken up into four pieces. In the 1992 plan it was broken up into five pieces. In the 1992 plan the largest of these pieces—42206 persons, 39.7% of the district's population—was moved into one of the two new Democratic-leaning districts. Another 27008 persons—25.4% of the district's population—was moved into the second of the two new Democratic-leaning districts. The remaining 37114 persons—34.19% of the district's population—were moved under the 1992 plan into three districts which the data indicate would have been won by the Republican candidate for the House with between sixty and sixty-five percent of the vote had the 1990 House elections been held in the new districts. Two of the segments into which the population of the old district 73.95% and 73.02%, respectively, of those 6,522 and 30,545 persons voted for the Democratic House candidate in 1990. Those two population segments in the 1992 plan are found in districts where the Democratic candidate would have received 36.81% and 40.30% of the vote had the 1990 election been held in the districts created by the 1992 plan.

XI

Henderson's writing and expertise

Defendant's appear to want to question my competence when they say in numbered paragraph 98 at page 36 of their findings of fact that I have never written or published anywhere on apportionment, redistricting, gerrymandering, racial bloc voting or minority voting rights. That is not true. I have never published an article or book strictly devoted to any one of these subjects. In one of my college textbooks, *American Democracy*, at pages 143 through 150 I dicsuss reapportionment, multimember districts, at large- elections, and give an example of racial bloc voting (using homogeneous precinct analysis) using election data from Jackson, Mississippi.

Further, it is difficult to question my credentials unless you are prepared to question the judgment of the three-judge federal district court which ordered my redistricting plan put into place for the Rhode Island House of Representatives in the greater Providence area, the judgment of numerous federal district court judges who have accepted my analyses as credible and valid even when ruling against the party I was retained by, and the judgment of the U.S. Supreme Court itself which in an opinion handed down fifteen years ago, in May, 1977, commented favorably upon the "Henderson county boundary plan" a plan I drew for plaintiffs challenging the redistricting of the Mississippi legislature.

XII

Defendants also say in numbered paragraph 218 at page 98 of their findings of fact that I offered no support whatsoever as to how pieces of districts in the 1981 plan made parts of districts in the 1991 plan "corelated with wards and precincts." That is not true. A listing was provided which showed how anyone with access to the unified data base could identify the wards and/or precincts and/or blocks that made up what I labelled as "pieces"—those segments into which districts in the 1980 plan were divided each of which segments was to be found in a different district in the 1991 and 1992 plans. In the leftmost column on that listing appeared the unique identification number which was assigned to every item of census geography in the unified data base. That unique identification number enables one to tell what piece of census geography is associated with that number and therefore enables one to determine exactly what wards, precincts, and/or blocks were included in each piece into which districts in the 1980 plan were divided.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 4, 1992.

/s/ Gordon G. Henderson
GORDON G. HENDERSON

* * * *

[Exhibit 5 to Brief of Plaintiffs in Response to the February 19, 1992 Filing of Defendants: filed March 6, 1992]

CHART 2

SUMMARY CHART SHOWING THE ELIMINATION OF INFLUENCE DISTRICTS WITH REPRESENTATIVES WITH 100% VOTING RECORDS ON MINORITY ISSUES [1]

District No.[2]	1981 Black Population [3]	Representative [2]	Voting Record [4]
32	26.6%	D. Conley	100%
17	26.0%	S. Bergansky [5]	100%
18	14.7%	J. Sheerer [5]	100%
47	13.2%	B. Quilter [6]	100%
30	12.4%	M. Stinziano	100%
15	34.9%	J. Campbell [5] [7]	100%

[1] Information showing the elimination of influence districts appears in Dykes Deposition Exhibit 20, p. 2. Information showing Representatives' voting records on issues of concern to the minority community appears in Henderson Deposition Exhibit 17 (showing 49 votes of concern to the minority community cast in the 115th-119th General Assemblies).

[2] Information taken from "Ohio Legislative Directory 119th General Assembly 1991-92," League of Women Voters of Cleveland Educational Fund, Inc. Voter Information Center, attached as Exhibit 3 to Plaintiffs' Conclusions of Law.

[3] Information taken from Dykes Deposition Exhibit 20, p. 2.

[4] Information taken from Henderson Deposition Exhibit 17.

[5] The 1991 plan pairs these three 100% responsive female representatives.

[6] Henderson Deposition Exhibit 17 transposes Representative Suster's name with Representative Quilter's name in District 47. Nevertheless, Representative Quilter is 100% responsive. See Henderson Deposition Exhibit 17 for District 47.

[7] In addition to the pairing of Representatives Bergansky, Sheerer and Campbell, the following eleven Democrats with 100% voting were paired: (1) Malone (Dist. 92); (2) Riffe (Dist. 89); (3) Czarcinski (Dist. 46); (4) Guthrie (Dist. 67); (5) Krupinski (Dist. 98); (6) Skeen (Dist. 69); (7) Seese (Dist. 41); (8) Koziura (Dist. 55); (9) Walsh Dist. 72); (10) C. Jones (Dist. 45); (11) Stinziano (Dist. 30).

[DOCKET =194]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

No. 91CV-2219

BARNEY QUILTER, *et al.*,
Plaintiffs,

versus

GEORGE V. VOINOVICH *et al.*,
Defendants.

OPINION AND ORDER

Decided and Filed May 5, 1992

Before: JONES, Circuit Judge, PECK, Senior Circuit Judge, and DOWD, District Judge.

PECK, Senior Circuit Judge. This complex case, or rather series of cases, had its origin in *Armour v. Ohio* which was filed in the District Court for the Northern District of Ohio in 1988. The district judge to whom the case was assigned referred it to a magistrate who recommended denial of relief for the plaintiffs. The district court adopted the magistrate's recommendation. On appeal to the Sixth Circuit Court of Appeals, the decision of the district court was reversed by the court sitting en banc, 925 F.2d 987 (6th Cir. 1991), which remanded with

directions to certify the case to the Chief Circuit Judge for the appointment of a three-judge court under the provisions of 28 U.S.C. § 2284. Challenged in that case was the plan devised and promulgated by the Ohio Apportionment Board which is charged under the Ohio constitution with the drawing of the districts from which the members of the Ohio General Assembly which consists of the House of Representatives and the Senate, are elected. The specific plan under attack was adopted by the board in 1981. The three-judge court appointed pursuant to the certification held that a voting district boundary line in Mahoning County which split a large cohesive black population between two districts violated the Voting Rights Act and the fifteenth amendment, 775 F. Supp. 1044 (N.D. Ohio 1991). No appeal to the Supreme Court was perfected from that decision.

The present action placed the validity of the apportionment plan promulgated in 1991 as it applied to the entire state at issue. This court held the plan to be invalid in a two to one decision. *Quilter v. Voinovich*, No. 5:91-CV-2219 (N.D. Ohio Jan. 31, 1992). Thereafter, the Apportionment Board prepared another plan which this court decided, by a divided court, to be unconstitutional. No. 5:91-CV-2219 (N.D. Ohio Mar. 10, 1992). That plan was neither published nor promulgated as required by the Ohio constitution and one of the issues in the present case is whether that plan was in fact a new plan or simply a revision containing "technical corrections" of the 1991 Plan, as contended by the defendants. We hold that the "technical corrections" were so extensive and pervasive that the resulting document constituted a new plan, hereinafter referred to as the 1992 Plan.

Meanwhile, two original actions involving additional aspects of the entire situation were filed in the Supreme Court of Ohio, which were removed to the district court for the Southern District of Ohio. Neither of those actions is directly involved herein at this juncture. This

court appointed a Special Master charged with the responsibility of preparing a plan of redistricting, authorizing him to employ such technical assistance as was deemed necessary for the drafting of the plan, and providing that the cost of this process be assessed against the state of Ohio. On application of the defendants, the Supreme Court of the United States issued on April 20, 1992, an order staying orders of this court entered March 10 and 31. Thereafter, the Special Master filed a Status Report and Request for Instructions pointing out that the plan he had been directed to prepare was 75% to 80% complete, that completion could be accomplished within a matter of days, but that if discontinued at that time would be more difficult and time consuming, and therefore more expensive, to complete at a subsequent time. In response, we ordered the Special Master to proceed to complete the plan, then to file it with this court under seal in order to be available in the event the Supreme Court feels that it may be of assistance. It is parenthetically observed that the members of this court are not aware of the details nor of the thrust of the proposed report, and when and if such a plan is filed under seal its integrity will be maintained pending further instructions from the Supreme Court.

Meanwhile, the passage of time placed the date of the primary election in jeopardy and has placed the political process in a hazardous position. Originally scheduled for May 5, 1992, it was rescheduled by order of this court for September 8, 1992, but is presently scheduled to be conducted June 2, 1992. The Secretary of State of Ohio, who is the chief elections officer of the state, formally advised the Boards of Elections of the eighty-eight counties in the state to do all acts necessary for the conducting of the election on the latter date. Additionally, the plaintiffs in *Armour v. Ohio* filed a motion asking, *inter alia*, for the issuance of an order to show cause why the state of Ohio should not be held in contempt of court because

use of the 1992 Plan was in conflict with the April 23rd order of the *Armour* court requiring the election to take place under the 1991 Plan. We decline, however, to take cognizance of the entire motion, including the request for a show cause order, because the motion was filed in *Armour v. Ohio*. Because we hold that the election may proceed under the 1991 Plan, the *Armour* plaintiffs' other requested relief can be resolved by the *Armour* court at a later date.

The need for a resolution of the issues in this case has become critical because of the time requirements and cut-off dates for the filing of nominating petitions, other periods established by state statutes and regulations, and allowance for time for the printing of ballots and incidental literature. A full literal compliance with the administrative time requirements would necessitate a re-scheduling of the announced date for the primary. The election officials are therefore empowered and directed to make such truncations of time periods or other appropriate adjustments to the end that the goal of conducting the primary election on June 2, 1992 can be accomplished.

Pursuant to a motion filed by the plaintiffs herein, a status conference was conducted yesterday in open court which was attended by counsel for all of the parties, and at which many of the parties were personally present. In the course of that conference, which lasted for three hours, attorneys for all of the parties, including those for and against the motion filed by the plaintiffs in *Armour v. Ohio* made extensive, detailed arguments. Upon one point all of counsel, and indeed, the parties themselves, were in agreement; all agreed that only an immediate decision by this court, deciding first under which plan the election is to be conducted, and truncating to the greatest reasonable extent the time periods indicated above, could the June 2, 1992 date become a reality. Following recognition of such agreement, at the conclusion of the hearing the presiding judge announced that the case would be considered as submitted and that an

opinion deciding the salient issues would be forthcoming within twenty-four hours. It is against that deadline that this opinion is in preparation.

Turning to the major issue facing us for decision, we face the task of, in effect, selecting the least flawed of the proposed redistricting plans, since none is without legal imperfections. One possible alternative, it should be noted, that of simply ordering that no primary election be held for legislative offices until a legally flawless plan is presented, thus automatically permitting incumbents to hold office until that eventuality occurred, we reject out of hand as inappropriate. A reincarnation of the 1981 Plan is not, of course, an option, it having been replaced by the properly published and promulgated 1991 Plan. The 1991 Plan, however, contained several serious errors and omissions as detailed in a thirteen page submission from the defendants. For instance, in Cleveland, War 4 Precinct CC was completely omitted from the 1991 Plan. Similarly, Coventry Township, Precinct J, in Summit County was omitted. Numerous wards, precincts, and townships were erroneously divided. These deficiencies were corrected in the 1992 Plan. It is now our conclusion that deficiencies of the 1992 Plan are less egregious than those of the 1991 Plan.

In reaching this conclusion, we are in no way depreciating the importance of providing full enlightenment to the electorate by the publication and promulgation process. On the contrary, we regard public education concerning issues and candidates to be a paramount element of the democratic process. In the present instance, however, we conclude that that educational process has been more completely accomplished by the news media than it could have been accomplished through strict compliance with the legal requirements, which could have been met through bare-bones, back-page material which seldom, if ever, is studied by a substantial number of voters. In the present situation, we take judicial notice of the wide-

spread publicity that has been given to this case. The media throughout the state of Ohio has accorded space and time to a discussion of the entire matter, and, indeed, this morning's newspapers, television and radio stories have afforded full coverage, including mention of yesterday's notation that this court would announce a decision today. We therefore hold that substantial compliance with the publication and promulgation requirements have been met.

The fact remains, however, that the Apportionment Board promulgated the 1992 Plan on February 18, 1992, the Secretary of State issued instructions to the county election boards on February 19, 1992, and the filing deadline was February 20, 1992. As previously noted, considerable media interest was focused on this matter. Despite the degree of public attention, we are forced to conclude that the amount of time allowed to decide whether to run in the new districts was inadequate. Accordingly, we direct the Secretary of State to accept new candidate filings in any Ohio House or Senate district reconfigured by the February 18, 1992 amendments. The filing deadline is Friday, May 8, 1992, at 4:00 p.m. The Secretary of State is empowered to take all actions, notwithstanding any state election law or time period to the contrary, to assure that any candidates filing under this court-ordered grace period are included in the June 2, 1992 primary election.

IT IS SO ORDERED.

/s/ Nathaniel R. Jones
HON. NATHANIEL R. JONES
U.S. Circuit Judge

/s/ John W. Peck
HON. JOHN W. PECK
Senior U.S. Circuit Judge

Dowd, J. dissenting:

I respectfully dissent from that part of the Order which creates a limited period for candidates to file nominating petitions for the Ohio General Assembly.

First, I read the order of the Supreme Court of the United States staying this Court's Orders of March 10, 1992 and March 31, 1992, coupled with the fact that the Supreme Court will review those orders, to divest this district court of jurisdiction with respect to the 1992 Ohio election for the General Assembly. The Court held in *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982), as a general rule, that a district court is divested of jurisdiction once a notice of appeal has been filed. *See also Morris v. Morgan Stanley & Co.*, 942 F.2d 648 (9th Cir. 1991); *Masalosalov v. Stonewall Insurance Co.*, 718 F.2d 955 (9th Cir. 1983) and *Thomas v. Board of Education*, 607 F.2d 1043 (2nd Cir. 1979).

The only exception to the general rule that a notice of appeal divests the district court of jurisdiction is found in the situation where the district court is left with the duty of maintaining the status quo during the pendency of the appeal. *Kiddler, Peabody & Co. Inc. v. Maxrus Energy Corp*, 925 F.2d 556 (2nd Cir. 1991); and *Hoffman v. Beer Drivers & Salesmen's Local Union No. 888*, 536 F.2d 1268 (9th Cir. 1976).

This is clearly not a case where the district court was vested with the responsibility of maintaining the status quo with regards to elections of members of the Ohio General Assembly. Before this Court was the narrowly defined issue of whether the 1991 Reapportionment Plan was constitutional under the Voting Rights Act and the fifteenth amendment. This Court does not have, nor ever did possess, the jurisdiction to oversee the election process in the state of Ohio. As such the exception identified in *Kiddler* and other cases is inapplicable. Since the defendant's have filed a notice of appeal with the United States Supreme Court, and the Supreme Court has in-

dicated that it will review this Court's March 10, 1992 and March 31, 1992 decisions, this Court is divested of jurisdiction and cannot address plaintiff's motion to stay.

In the event that my first reason is found to be without merit, I believe this Court should decline jurisdiction over ruling on what are clearly state, not federal, issues. Jurisdiction in this Court was invoked by claims brought under the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution.

Today's Order is in response to claims that the 1992 election for the Ohio General Assembly violates provisions of the Ohio Constitution and enactments of the General Assembly. As such, the plaintiffs seek to amend their complaint to include these pendent state claims. Direction as to the disposition of pendent state claims in federal cases was definitively provided in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). In *Gibbs*, the Supreme Court held that pendent jurisdiction may be exercised when there is a substantial federal claim and the state claim arises from a "common nucleus of operative facts." *Id.* at 725.

The *Gibbs* Court noted that district courts are not required to hear state claims that satisfy the two prong test for pendency. The Court explained:

> [I]t has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right. Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims, even though bound to apply state law to them . . . Needless decisions of state claims should be avoided as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law.

Id. at 726.

While the decision to exercise pendent jurisdiction lies within the discretion of the district court, the *Gibbs* Court held that the reasons for exercising pendent jurisdiction are not present in a situation where the federal claims are dismissed. "[I]f the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." *Id.* 726. *See eg. Hardy v. Brimingham Board of Education*, 954 F.2d 1546, 1553 (11th Cir. 1992) ("in the absence of an issues of federal law, and with no federal subject matter jurisdiction other than pendent jurisdiction being present, pendent jurisdiction may not be exercised by a federal court."); *Sem-Torq v. K Mart Corp.*, 936 F.2d 851, 855 (6th Cir. 1991) ("when federal claims are dismissed before trial, the court should dismiss the state claim without prejudice."); and *Baer v. R & F Coal Co.*, 782 F.2d 600 (6th Cir. 1986).

In *Baer*, the plaintiff originally brought suit pursuant to the Age Discrimination in Employment Act. The district court ruled that his federal age claim was time barred, and dismissed the action. After the dismissal of his federal claim, the plaintiff attempted to add a state claim of age discrimination under the doctrine of pendent jurisdiction. The district court denied his request and dismissed the action, holding that because there was no longer a federal claim, there was no claim upon which the state claim could attach. Like the plaintiff in *Baer*, the plaintiffs in the present matter are attempting to interpose a state claim where no federal claim is currently pending.

It is my opinion that the decision of the United States Supreme Court staying this Court's March 10 and March 31, 1992 decisions operates as a dismissal of the federal claims under the Voting Rights Act and the fifteenth amendment for purposes of pendent jurisdiction analysis. In *Evans Transportation Company v. Scullin Steel Co.*, 693 F.2d 715, 718 (7th Cir. 1982), the court held that

"apart from the statute of limitations consequences, a stay is the equivalent of a dismissal without prejudice." *See also State Farm Mut. Auto Ins. Co. v. Scholes*, 601 F.2d 1151, 1155 (10th Cir. 1979) (court held that a stay of the present court's proceedings pending the resolution of the state court action would in effect operate as a dismissal without prejudice because a state court judgment would preclude litigation involved in the federal action); and *Centronics Data Computer Corporation v. Merkle-Korff Industries*, 503 F. Supp. 168 (D. New Hamp. 1980).

In the present case, the Supreme Court has stayed the two decisions of this Court that addressed the substantial federal claims under the Voting Rights Act and the fifteenth amendment. As such, for purposes of pendent jurisdiction, these issues must be treated as voluntarily dismissed. Since the federal claims upon which the plaintiffs wish to attach their state law claims are theoretically absent from this case, this court cannot exercise pendent jurisdiction and allow plaintiffs' state law claims.

Moreover, in the absence of a class certification, I find no standing on the part of any of the named plaintiffs in this action to seek the orders issued by the majority today. Not one of the plaintiffs is directly affected by the failure of the Ohio Apportionment Board to satisfy the publication requirements of O.R.C. 107.09. In their motion for stay, filed April 29, 1992, the plaintiff's attach the affidavit of James Randal Weston, who attests that he changed his residence in compliance with the "1991 Plan", only to be denied the right to run for General Assembly because he had failed to file pursuant to the revised "1992 Plan." While Mr. Weston's predicament is unfortunate, he is not a named plaintiff to this action, and is not the member of any recognized class approved by this Court. Since the plaintiffs are unable to demonstrate that any of the named plaintiffs have been prejudiced, they lack standing to seek today's Order.

The Order from which I dissent is anchored in the concern that potential candidates for the Ohio General Assembly were not given a fair opportunity to declare for the office, either as a candidate for the House of Representatives or as a candidate for the Senate, because the 1991 Plan as revised was not adopted until February 18, 1992 and the deadline for filing was a scant two days later.

While I sympathize with that justifiable concern that prompts the action of my colleagues, I note that no such candidate has sought relief in the state courts. I fear that the cure for the defect as adopted by my colleagues will severely jeopardize the ability of state and county election officials to conduct the 1992 primary in an orderly manner.[1]

/s/ David D. Dowd, Jr.
DAVID D. DOWD, JR.
U.S. District Judge

[1] The affidavit of John F. Bender, Chief Elections Counsel for the Secretary of State, presented to the Court at the status conference hearing conducted on May 4, 1992 and filed with the Cleck's Office on May 5, 1992 demonstrates the difficulties that this Order will create by reopening the process for candidates to declare for the June 2, 1992 primary. A copy of the affidavit is attached as Appendix A.

APPENDIX A

AFFIDAVIT OF JOHN F. BENDER

STATE OF OHIO,
COUNTY OF FRANKLIN, ss:

I, John F. Bender, Esquire, having been first duly SWORN and cautioned states that:

1. I am the Chief Elections Counsel for Secretary of State of Ohio Bob Taft. In that capacity I am responsible for supervising Ohio's elections system and having knowledge of matters concerning the operation of that system.

2. If the United States District Court for the Northern District of Ohio issues an order mandating that General Assembly candidates must run from districts established by the Apportionment Plan submitted in October 1991 and not from districts established by the Apportionment Plan as amended on February 18, 1992, a primary election for General Assembly candidates cannot be held on June 2, 1992.

3. There are only 29 days remaining prior to June 2, 1992. There is insufficient time remaining prior to June 2, 1992 to redraw district lines, reprint ballots, determine affected candidates, and reprogram automatic and electronic voting machines for General Assembly candidates to run under the October 1991 districts.

4. Ballots including absentee ballots have been printed and voting machines programmed for all of Ohio's 13,000 plus precincts for districts established by the Apportionment Plan as amended on February 18, 1992. New ballots cannot be printed without General Assembly candidates. Therefore ballot pages will have to be removed in 66 counties utilizing the "punch card" system and names "blocked off" in counties using an automatic or optical scan system. In addition in those counties using automatic voting sys-

tems, machines must be reprogrammed or calibrated and levers covered. Some counties estimate this takes up to 35 days. In Franklin County alone this involved approximately 2800 voting machines in 700+ precincts. There machines are currently being placed or are in place in the precincts.

5. Tens of thousands of ballots must be revised. There will not be time to accomplish those actions specified in paragraph 3 above and voters will vote on non-existent races. Also there exists the probability of programming errors which can effect the validity of other races. Finally in many counties, including Cuyahoga County Ohio's largest, General Assembly races are printed on the same ballot page as other races. Those ballot pages cannot be removed.

6. Absentee ballots must be available no later than May 13 for distribution beginning no later than May 20, 1992. Given this time frame, many of these ballots cannot be "blocked out" for General Assembly candidates. In fact, Portage County will begin distributing absentee ballots on May 5, 1992.

7. Since all candidates have filed and been certified under the districts as provided in the February 18 plan, reverting to the October plan may necessitate establishing new filing and certification deadlines. Either allowing all candidates in affected and non aflected districts to refile or allowing only candidates in affected districts to refile will raise legal challenges based on equal protection and due process.

8. The chaos and confusion created among voters who will vote on nonexistent races, candidates who are filed and certified, and elections officials who must now attempt to remove General Assembly races from the ballot will undermined public confidence in the elections system and potentially affect the validity of the whole primary.

9. Ensuring a second primary on September 8 or some other date creates the chaos and confusion raised in my prior affidavit of April 3, 1992 attached to the Supplemental Memorandum in Support or Application to Stay Order of the District Court filed with the U.S. Supreme Court on April 6, 1992 which is attached hereto and incorporated as if fully rewritten herein.

/s/ John F. Bender
JOHN F. BENDER

SWORN to before me and subscribed in my presence this 4th day of May, 1992, in Franklin County, Columbus, Ohio.

/s/ [Illegible]
Notary Public
My Commission Has No
Expiration Date

No. A-693

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1991

GEORGE V. VOINOVICH, *et al.*,
Appellants,

v.

BARNEY QUILTER, *et al.*,
Appellees.

AFFIDAVIT

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

Now comes John F. Bender, being first duly cautioned and sworn, says that in his capacity is Chief Elections Counsel to the Ohio Secretary of State, he is responsible for compliance with and enforcement of Ohio elections laws.

Affiant says that in its Order of March 31, 1992, the District Court, in the Case of *Quilter v. Voinovich*, No. 5:91CV2219 (N.D. Ohio, March 31, 1992), stated:

> Having been advised by the office of the Secretary of the State of Ohio that the date of June 2, 1992, for the primary election for the purpose of selecting candidates for membership in the General Assembly of Ohio to be voted upon at the General Election to be held November 3, 1992 as directed by order en-

> tered herein March 10, 1992 cannot be met and must be vacted, said primary election is hereby rescheduled to be held September 8, 1992. It is further ordered that the Secretary of State of Ohio be and he hereby is enjoined to do all such acts as may be necessary for the holding of such primary election September 8, 1992.

On April 2, 1992, Counsel for Appellees in this case, in their Supplemental Memorandum in Opposition to Appellants' Application for a Stay, stated that "[t]he Secretary of State of Ohio, Robert A. Taft, a Defendant-Appellant herein, has advised the trial court that the State of Ohio could not meet the June 2, 1992, primary date for election to the Ohio General Assembly set by the trial court." Appellees' statement is a mischaracterization of the position of the Ohio Secretary of State. Since the Order of March 10, 1992, enjoining the May 5, 1992, primary date, the Secretary of State has consistently maintained that in order to hold a primary election on June 2, 1992, new legislative districts would have to be in place no later than March 27, 1992. A primary election could, therefore, take place on June 2, 1992, under the legislative districts established under the 1991 plan of apportionment, which plan was enjoined by the District Court on March 10, 1992.

Affiant further states that the Ohio General Assembly, in House Bill 700, signed by the Governor, in an effort to avoid the necessity of holding two primary elections in 1992, moved the entire Ohio primary election to June 2, 1992, the date originally set as the date for the primary election by the District Court in this case.

Affiant says that the District Court's Order of March 31, 1992, fixing September 8, 1992, as the date of the primary election for members of the Ohio General Assembly, unless stayed by this Court, will necessitate the holding of two primary elections in Ohio in 1992, at an additional cost of approximately $6,000,000.00.

Affiant states that local boards of elections will be in the middle of preparing for the November 3rd general election on September 8. To prepare for a special primary while preparing for the August special and November general elections will present many local boards with massive administrative and financial problems. Counties which are responsible for paying for elections have indicated they cannot afford an additional election due to budgetary constraints.

Affiant says that a September 8, 1992, primary election means Ohio will have three statewide and two special elections in 1992, rendering the recruitment of sufficient qualified pollworkers for five elections in one year impossible in some areas.

Affiant further states that under Ohio law, voting machines must be locked for 60 days after an election, to preserve evidence of the official votes cast. If a primary is held on September 8, 1992, the machines cannot be unlocked in time for the November 3, 1992, general election. Likewise, voting machines used for the August special election cannot be used on September 8, 1992. The State of Ohio will, therefore, have an insufficient number of voting machines available to conduct an election on September 8, 1992, which complies with Ohio law.

Affiant says that by the establishment of a September 8, 1992, primary election date, many out-of-state and military Ohio citizens may not be aware of the new primary or of the need to request absentee ballots for that date. Affiant further says that by law, absentee ballots must be available 35 days prior to the November 3, 1992, general election. A September 8, 1992, primary will allow only six days to print absentee ballots, an impractical deadline to meet. Absentee ballots for the September 8, 1992, primary would have to be made available on the same day as the absentee ballots provided for the August 4, 1992 special election, which will create great confusion among the absentee voters.

Further, Affiant says that candidates for election to the Ohio General Assembly have already filed under existing districts. To hold a September primary with new districts may force candidates to move more than once to meet the Ohio constitutional and statutory residency requirement.

Further Affiant says not.

/s/ John F. Bender
JOHN F. BENDER

Sworn to and subscribed in my presence this 3rd day of April, 1992.

/s/ [Illegible]
Notary Public
My Commission Has No
Expiration Date